129-387

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1199.

MARGARET RUCKMAN, APPELLANT,

vs.

JONATHAN CORY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 5, 1888.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	4	1
Order as to time to answer, &c.	10	4
Answer	11	5
Order extending time to take testimony	16	7
Order on complainant to close testimony	16	7
Order as to time and place of taking testimony	17	8
Order appointing commissioner to take testimony	17	8
Order on master to take testimony, &c.	18	8
Order setting cause for hearing	18	9
Amendment to answer	19	9
Evidence taken before John A. Jones, master	21	10
Testimony of Nathan Nieukirk	21	10
Jonathan C. Drake	26	12
Thomas S. Mather	31	16
Wm. H. Dougherty	32	16
Isaac C. Brown	37	19
W. D. Bowers	38	20
Mrs. Elizabeth Cory Buxton	44	23
Jonathan Cory	51	27
Exhibit B. (Cory)—Letter of Ruckman to Cory, Jan. 19, 1865	75	40
C. " — " " " Jan. 18, 1865	75	40
F. " — " " " Jan. 7, 1867	76	40
G. " — " " " —— —, 1864	77	40
H. " — " " " Oct. 16, 1869	78	41

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	Original.	Print.
Exhibit I. " — " " " Sept. 21, 1869	79	41
J. " — " " " Jan. 15, 1870	79	41
K. " — " " " July 18, 1872	80	42
Evidence taken before S. Murdock, commissioner	81	42
Testimony of B. S. Prettyman	81	42
Evidence in case of Ruckman *vs.* Cory *et al.* taken before Isaac Romaine, commissioner	97	48
Notice to take testimony	97	48
Deposition of Margaret Ruckman	99	49
Elisha Ruckman	102	51
Exhibit P^1—Letter of Ruckman to Krebaum, May 31, ——	104	52
P^2— " Krebaum to Ruckman, Aug. 3, 1861	104	53
P^3— " " " Judson, May 1, 1862	105	53
P^4— " " " Ruckman, June 7, 1862	106	54
Warrantee deed from Willis D. Bowers to Elisha Ruckman, Oct. 1, 1858	108	55
Deed of Elisha Ruckman to Margaret Hopping, Apl. 24, 1862	112	57
Commission to Wm. C. Davis	115	59
Interrogatories to be propounded to Margaret Ruckman	116	59
Deposition of Margaret Ruckman	121	62
Evidence taken before S. A. Murdock, commissioner	128	65
Testimony of Mrs. Sarah J. Bowers	129	66
Chas. M. Drury	136	70
Esther Phillips	143	74
Notice to take testimony	147	76
Testimony of Adolph Krebaum	149	77
Exhibit A. (Krebaum)—Letter of Ruckman to Krebaum, May 29, 1862	156	81
B. " Letter of Ruckman to Krebaum, May 31, 1862	157	82
Testimony of H. A. Wright	158	82
Evidence taken before J. A. Brown, master, &c.	161	84
Testimony of Thomas Ray	162	84
Christian H. Garver	171	88
Notice to take testimony	175	89
Master's certificate	177	90
Decree	179	90
Order entering motion for rehearing	180	91
Order overruling motion for rehearing	180	91
Order allowing appeal	181	91
Bond	182	92
Clerk's certificate	184	92
Assignment of errors	185	93
Affidavit of value	187	94

1, 2, & 3 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Honorable William J. Allen, district judge for said southern district of Illinois, and, in the absence of Honorable Walter Q. Gresham, judge of the seventh judicial circuit, on Tuesday, the first day of November, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and twelfth year.

JAMES T. JONES, *Clerk.*

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

JONATHAN CORY
vs.
MARGARET RUCKMAN. } In Chancery.

Be it remembered that heretofore, to wit, on the thirty-first day of July, in the year of our Lord one thousand eight hundred and eighty-three, came Jonathan Cory, a citizen of the State of Illinois, by Messrs. Palmers, Robinson and Shutt, his solicitors, and filed in the clerk's office of said court his bill of complaint against Margaret Ruckman, a citizen of the State of New York; which said bill of complaint is in the words and figures following, to wit:

4 *Bill.*

In the Circuit Court of the United States, Southern District of Illinois. January Term, A. D. 1883.

The bill of complaint of Jonathan Cory, a citizen of the State of Illinois, complainant, against Margaret Ruckman, a citizen of the State of New York, defendant.

To the honorable the judges of said court, sitting in chancery:

Complaining, showeth unto your honor, Jonathan Cory, who is a citizen of the State of Illinois and resident of the county of Mason, in said State, that in the month of May, in the year 1856, your orator contracted with one Willis D. Bowers, now a resident of the county of Tazewell, in the State of Illinois, for the purchase of the southeast quarter of section number one (1), in township No. twenty-one (21) north, of range No. five (5) west, of the third principal meridian, for the sum of one thousand dollars; five hundred dollars of said purchase-money to be paid by your orator to said Bowers on the first day of October, 1857, with ten per centum interest, and the remaining five hundred dollars to be paid on the first day of October, 1858, with ten per centum interest; and your orator and said Bowers entered into a contract in writing embodying the terms aforesaid and an agreement on the part of said Bowers to convey said tract of land to your orator by deed in fee upon the payment of the said sum of money and interest.

And your orator further states unto your honor that when
5 the first sum of five hundred dollars fell due to said Bowers your orator offered to pay the same, but for some reason said Bowers refused to accept the same, so that on the first day of October, 1858, there was due to him, of principal and interest. on the said contract the sum of twelve hundred forty dollars or thereabouts.

And your orator would further show unto your honor that during the year 1858, before the said sum of money fell due, one Elisha Ruckman, who then resided in the State of New Jersey, but did business in New York, and a cousin of your orator, and who had considerable business in Illinois, visited your orator, who then and has ever since resided on said lands, and while on said visit offered to loan your orator any sum of money which your orator might need in order to pay for said lands, and he finally directed Thomas C. Mather, his agent, at Springfield, Illinois, to pay to your orator any money he might need to pay for said land.

And your orator would further show to your honor that in the month of September, 1858, his crops for that season having failed, he found it necessary to avail himself of the offer of said Ruckman, and called at the office of Mr. Mather, at Springfield, to obtain the money in pursuance of the instructions of said Ruckman, but Mr. Mather was absent; whereupon your orator at once proceeded to the residence of said Ruckman, in New Jersey, and there borrowed from him the sum of $1,000, and soon thereafter returned to Illinois, and about the first day of October, 1858, paid to said Bowers the
6 full price, principal and interest, on said land, paying therefor the sum of $1,000 borrowed from Ruckman and $240 of his own money.

And your orator would further show unto your honor that before and at the time your orator obtained said money from said Ruckman your orator spoke to him of the interest which he would require for the same, and he said in substance that he did not know that he would require any interest, and if he did he would not ask more than six per cent., which he said was — he had to pay when he borrowed money; and he said, furthermore, that he did not want security, as he wanted the services of your orator in a legal controversy which he then had with one Alwood, then and for a long time afterwards pending in the courts of Illinois, in which your orator, who is an attorney-at-law, acted, in conjunction with others, in the interest of said Ruckman, and the said Ruckman then delivered the sum of $1,000 to your orator and, for the same reasons, took no note or other security from your orator therefor, and your orator made no agreement with him whatever for securing to him the payment to him of said sum of money.

And your orator would further show unto your honor that after being dealt with so liberally by said Ruckman it occurred to him it would be but fair to make him secure of his said money or of the services of your orator in his said litigation. He therefore, when he paid said sum of money to said Bowers, without any consultation with said Ruckman, and without any notice to him or expectation on his part that it would be done, caused said Bowers to con-

7 vey said land directly to said Ruckman, and said Bowers did then and there, by deed and in pursuance of your orator's directions, convey said lands to Elisha Ruckman, and your orator took said deed and caused the same to be recorded and sent to said Ruckman.

And your orator would further show unto your honor that after the execution of said deed by said Bowers as aforesaid your orator proceeded, in pursuance of his understanding with said Ruckman, and continued, as he had before done, to attend to the litigation — which the said Ruckman was then and thereafter engaged, until his services greatly exceeded in value the amount of money advanced to him, but afterwards, on or about the 4th day of April, 1862, the said Elisha Ruckman, by a deed of that date, conveyed all of said lands, with other lands, to Margaret Hopping, who, by her present name of Margaret Ruckman, is made defendant to this bill.

And your orator would further show unto your honor that the truth is that the said deed made by the said Elisha Ruckman to the said Margaret Hopping was without any good or valuable consideration; that, as your orator is informed and believes, the said Margaret Hopping was then an unmarried woman, living in the family, but in nowise akin of the said Elisha Ruckman, but that the said Ruckman afterwards, about the 25th day of January, 1864, married her, and she was at the commencement of this suit living separate from said Elisha Ruckman, who has since died.

And your orator further shows your honor that he, in manner aforesaid, fully paid to said Ruckman the amount of money so advanced to him, and that long before the death of said Ruck-
8 man he called upon him to reconvey said land, but he said he had conveyed said land to the said Margaret, and promised your orator that the said Margaret should make him a deed, but such deed was never made.

And your orator would further represent unto your honor that he was in the actual possession of said land when the same was conveyed by said Bowers to said Elisha Ruckman, and has continued to occupy the same ever since; that the said Elisha Ruckman never claimed to own the same or to have any claim or interest therein, and the said Margaret Ruckman, to the knowledge of your orator, never made or asserted any claim thereto until a short time before she commenced her action of ejectment against your orator to recover the same, which will be hereafter mentioned, and your orator has at all times since the date of the deed of said Bowers claimed to own said land and has paid all taxes assessed thereon.

And your orator further shows to your honor that the said defendant, Margaret Ruckman, now denies the right and title of your orator to said land and refuses to convey him the legal title thereto, as she ought in equity to do, but has commenced an action of ejectment in this honorable court against your orator to wrest him of the possession thereof and threatens to prosecute the same against your orator and upon the strength of her pure legal title wholly deprive your orator of said land; all of which action and doings of the said defendant are contrary to equity and good conscience, and

forasmuch as your orator is without other relief, he prays the
9 intervention of this honorable court.

And may it please your honor to grant to your orator a writ of subpœna directing and commanding the said defendant to appear in this honorable court before a day therein to be fixed, and there to fully and unevasively answer all the allegations of this your orator's bill, not on oath, her answer upon oath being expressly waived, and on the final hearing hereof may it please your honor to order and decree that the said defendant, Margaret Ruckman, within a short day to be fixed by your honor, by a good and sufficient deed, convey all of her right, title, and interest of, in, and to the lands herein described to your orator; and may it please your honor to grant to your orator such other and further relief as the case may require and to equity belongs, &c.

PALMERS, ROBINSON & SHUTT,
Sol's for Complainant.

UNITED STATES OF AMERICA, *ss*:

Personally appeared before the undersigned, clerk of the circuit court of the United States for the southern district of Illinois, Jonathan Cory, who, being sworn, says on oath that the matters and things stated and set forth in the foregoing bill in equity are true in substance and fact.

JONATHAN CORY.

Subscribed & sworn to before me this 30th July, A. D. 1883.
J. A. JONES, *Clerk.*

(Endorsed:) Filed July 31, 1883. J. A. Jones, clerk.

10 And afterwards, to wit, on Thursday, the 13th day of September, at the June term of said court, A. D. 1883, the following proceedings were had in said court in said cause and entered of record, to wit:

JONATHAN CORY
v.
MARGARET RUCKMAN. } T. No. 185. 6676. In Chancery.

By consent, defendant is to answer within ten days from this date, complainant is to close his testimony within thirty days from this date, and defendant to close within thirty days thereafter, and the cause to stand for hearing at the next term.

11 And afterwards, to wit, on the 19th day of September, A. D. 1883, came the defendant, by her solicitors, and filed in the office of the clerk of said court her answer to complainant's bill of complaint; which said answer is in the words and figures as follows, to wit:

The Answer of Margaret Ruckman, the Defendant, to the Bill of Complaint of Jonathan Cory, the Complainant.

In the Circuit Court of the United States, Southern District of Illinois. June Term, A. D. 1883. In Chancery.

JONATHAN CORY *vs.* MARGARET RUCKMAN.

This defendant, reserving to herself all right of exception to the said bill of complaint, for answer thereunto says—

That she denies that the complainant contracted with Willis D. Bowers for the purchase of the land in question, but, on the contrary, she avers that if the complainant ever made a contract for the purchase of said land it was done for and in behalf of said Elisha Ruckman and as the agent of said Elisha Ruckman. This defendant denies that said Bowers entered into a contract, as mentioned in the bill, to convey said land to the complainant, but, on the contrary, this defendant avers that if any contract was made between the said Bowers and Cory it was for and in behalf of said Elisha Ruckman, and that in making of same by Cory he was acting as the agent of said Ruckman, and if said contract provided that
12 said Bowers should make a deed for said land it was to be executed to said Elisha Ruckman.

The defendant, further answering, denies that said Cory offered to pay to said Bowers five hundred dollars, and that Bowers refused to receive it, in the manner and form as charged in the bill, but, on the contrary, the defendant charges that if any such money was offered to said Bowers it was the money of Elisha Ruckman and offered for and in his behalf.

Defendant further denies that Elisha Ruckman offered to loan the said Cory any sum of money said Cory might need to pay for said land, and that he directed one Thomas C. Mather to pay to said Cory any money he might need to pay for said land in manner and form as charged in the bill. This defendant further denies that said Cory proceeded to the residence of said Ruckman, in New Jersey, and there borrowed from him the sum of one thousand dollars, as charged in the bill, but, on the contrary, defendant avers that if said Cory received any money from said Ruckman he received it for the purpose of paying for said land for said Ruckman, and as agent for said Ruckman, to purchase the land for him, the said Ruckman.

This defendant further denies that said Cory so paid to said Bowers for said land the sum of one thousand dollars borrowed from said Ruckman and two hundred and forty dollars of his own money, but, on the contrary, avers that if said Cory paid said Bowers said sum of twelve hundred and forty dollars the money belonged to said Ruckman, and the same was paid for him, and that said Cory in so paying did so as the agent of said Ruckman and not for himself.

13 This defendant further denies that said Ruckman told said Cory that he did not know that he would require any in-

terest, and if he did he would not ask more than six per cent., as that was what he had to pay when he borrowed money; and defendant denies that Cory spoke to said Ruckman of what interest he would require; and defendant denies that Ruckman told Cory that he could have it without security, as he wanted the services of said Cory in a legal controversy which he then had with one Alwood, then pending in the courts of Illinois. This defendant denies said Cory acted in connection with others in the interest of Ruckman in any such suit he had with said Alwood; and this defendant denies that for the reasons mentioned in the bill said Ruckman let said Cory have the $1,000, and for such reason said Cory made no agreement with Ruckman for securing *to* payment of said sum of money, but, on the contrary, avers that whatever money said Cory received from said Ruckman he received as agent and not as a loan, and it was for this reason no note was given and no agreement made as to interest.

This respondent denies that when said Cory paid said sum of money to said Bowers he did so without any consultation with said Ruckman and without any notice to him or expectation on his part that it would be done, and denies that he caused said Bower to convey said land to said Ruckman, because it occurred to him, Cory, that it would be but fair to make him secure of his money or of the services of said Cory in said litigation; but, on the contrary, the defendant avers that said Bowers made said deed to said Ruck-
14 man, and said Cory knew it was so made, because said Ruckman's money had paid for it and because it was purchased for him and not Cory, and that whatever Cory did about having said deed so made he did as the agent of said Ruckman.

This defendant admits that said Bowers executed said *and* to said Ruckman, but she avers it was made to him because he was the one to whom it should be made, and not because said Cory may have directed it to have been done. This defendant denies that said Cory proceeded, in pursuance of the understanding with said Ruckman, and continued as he had before done, to attend in said litigation, but she avers that said Cory was never employed by said Ruckman to attend to any such litigation, and denies that said Cory was ever engaged in any such litigation, and denies that his services exceeded in value the amount advanced by Ruckman or any other amount. This defendant admits that said Ruckman, on the 24th day of April, 1862, conveyed said land and other lands to her, and she avers that her said deed was duly recorded in the recorder's office of said Mason county on May 5th, 1862, of which said Cory had due notice. This defendant denies that her said deed was made without any good or valuable consideration. The defendant admits that she was then an unmarried woman and that on or about the 25th of January, 1864, she married the said Ruckman, and that when this suit was commenced she was living separate from him, and that he is now dead. This defendant denies that said Cory paid to said Ruckman the amount of money said Ruckman let him have, because defendant denies that he ever advanced to said any money by way of a loan. This defendant denies that Cory

15 said Cory called upon said Ruckman long before his death to reconvey said land, and denies that said Ruckman promised said Cory that this defendant should make him a deed.

This respondent admits that said Cory has continued to occupy said land, but this defendant avers that he entered into such possession and so continued in the same under an agreement with said Ruckman that he, Cory, would pay the taxes for the use of the land.

This defendant denies that said Ruckman never claimed to own said land or to have *or* interest therein, and denies that this defendant never made or asserted any claim thereto before the commencement of her action of ejectment, and denies that said Cory has at all times since the date of said deed of said Bowers claimed to own said lands, and denies that said Cory has paid all the taxes assessed on said lands, but admits that he has paid most of them; but she avers that what taxes he paid he paid for said Ruckman and this defendant for the use of the land, in pursuance *with* his agreement with Ruckman to that effect. This defendant admits that she has commenced the action of ejectment mentioned in the bill, and she avers that she recovered a judgment against said Cory for the possession, but that said Cory paid the costs and obtained a new trial under the statute, which suit is now pending in said court.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in the said bill demanded, and prays the same advantage of this answer as if she had demurred or pleaded to said bill of complainant, and prays to be dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

MARGARET RUCKMAN,
By L. DEARBORN,
W. H. CAMPBELL,
Her Solicitors.

(Endorsed:) Filed September 19th, 1883. J. A. Jones, clerk.

16 And afterwards, to wit, Saturday, the tenth day of November, at the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } T. No. 185. 6676. In Chancery.

On motion of complainant, by Messrs. Palmers, Robinson & Shutt, his solicitors, the time for complainants to take testimony is extended until the 10th day of December next.

And afterwards, to wit, Monday, December 3rd, at the term and

year last aforesaid, the following further proceedings were had in said court in said cause, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } T. No. 185. 6676. In Chancery.

It is ordered by the court that complainant close his testimony by the first day of January next.

17 And afterwards, to wit, Wednesday, December 19th, the term and year last aforesaid, the further following proceedings were had in said court in said cause and entered of record, to wit:

JONATHAN CORY
v.
MARGARET RUCKMAN. } T. No. 185. 6676. In Chancery.

By consent of parties, by their solicitors, testimony is to be taken in this cause at Springfield on the 21st inst. and at Havana on the 28th inst.

And afterwards, to wit, Monday, the 31st day of December, the term and year last aforesaid, the further following proceedings were had in said cause, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } In Chancery.

On motion of defendant, by W. H. Campbell, Esq., her solicitor, Samuel A. Murdock is hereby appointed special commissioner to take testimony of such witnesses as may be produced before him at Havana on behalf of defendant on five days' notice of the time and place of taking such testimony being given to complainant or his solicitor.

18 And afterwards, to wit, on Thursday, the 30th day of April, at the January term of said court, A. D. 1885, the following further proceedings were had in said cause in said court and entered of record, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } T. No. 135. 6676. In Chancery.

It is ordered by the court that the master in chancery of Macon county, Illinois, take and report to the court any testimony that may be offered by either party on ten days' notice, and that S. A. Murdock, of Mason county, Illinois, take and report any testimony that may be offered by either party on ten days' notice, and that defendant close her testimony in thirty days thereafter.

And afterwards, to wit, Saturday, August 6th, at June term of said court, A. D. 1887, the following further proceedings were had in said court in said cause and entered of record, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } T. No. 112. 6676. In Chancery.

By consent of parties, by their solicitors, this cause is set for hearing on Thursday, the 11th day of August, inst.

19 And afterwards, to wit, on the 12th day of August, A. D. 1887, came the defendant, by her solicitors, and filed in the office of the clerk of said court her amendment to answer; which said amendment to answer is in the words and figures following, to wit:

Amendment to Answer.

UNITED STATES,
State of Illinois, } *ss:*

In the Circuit Court of the United States, Southern District of Illinois.

JONATHAN CORY *vs.* MARGARET RUCKMAN.

Injunction, &c.

And now comes the defendant, Margaret Ruckman, and, by leave of the court first had and obtained, amends her answer filed in this cause, and for amendment thereto says: After the word demanded, in the 6th line of page 9 of said answer, insert the following words: "And this defendant, further answering, says that said complainant is estopped and barred from claiming or asserting any title, claim, or interest in or to said lands by reason of the delay and laches of the said complainant in the commencement of his suit; that if said complainant ever had any cause of action his right thereto accrued more than ten and even more than twenty years prior to the commencement of this suit, and said right is fully barred by the statute of limitation, which defendant also set up and will rely on as a defence in this suit, as well as all the other defences;" and defendant, further answering, says that if there was ever any understanding or agreement, either expressed or implied, between the said Willis D. Bowers and complainant or between the said Elisha Ruckman and said complainant or either of them that said land was to be con-
20 veyed to said complainant or that he had or was to have any right, title, or interest in or to said land or any part thereof, save and except as a tenant, that such understanding or agreement, whether expressed or implied, rested entirely in parol and was not in writing and was wholly void and of no effect, being obnoxious to the statutes of frauds and perjuries; and defendant expressly set

up the statutes of frauds and perjuries in defense of the complainant's right to recover in this suit or the granting of its relief prayed for in connection with her other defences in this suit, and defendant denies that there ever was any agreement or understanding that said Ruckman was to convey said land to said complainant.

By PRETTYMAN & WALLACE,
Solicitors.

(Endorsed:) Filed August 12, 1887. James T. Jones, clerk.

21 *Depositions.*

In the Circuit Court of the United States for the Southern District of Illinois. In Chancery.

JONATHAN CORY *vs.* MARGERET RUCKMAN.

Testimony taken before John A. Jones, master in chancery of said court, at his office, in the city of Springfield, Illinois, on Tuesday, the 18th day of December, A. D. 1883, on behalf of complainant.

NATHAN NIEUKIRK, being first duly sworn, deposes and says:

My name is Nathan Nieukirk; age, 50 years; residence, San Jose, Mason county, & occupation, farmer; was somewhat acquainted with Elisha Ruckman in his lifetime; had an introduction to him; could not say how many times I met him—say 3 or 4 times.

Int. 1. Did you ever have a conversation with Mr. Ruckman in the presence of Jonathan Cory, in which conversation Mr. Ruckman spoke of the ownership of the property in controversy?

Ans. Yes, sir.

Int. 2. When and where did that conversation occur?

Ans. It occurred in my place in Mason county. It was in spring of 1866, as near as I can remember.

22 Int. 3. Did Mr. Ruckman in that conversation refer to the land in controversy and then and there say that the farm then occupied by the said Cory was then owned by the said Cory and was a fine farm?

(Objected to as leading and suggestive.)

Ans. He spoke of Mr. Cory's farm—of being a good farm.

Int. 4. Did he state in that conversation that Mr. Cory was the owner of said farm, as you understood him?

(Objected to as leading and suggestive.)

Ans. He spoke in this wise: Mr. Cory owned a good farm.

Int. 5. How long have you lived in Mason county?

Ans. In Mason county and Logan I have since 1858, 15th March.

Int. 6. What was the value of the land in controversy in 1858, in your judgment?

Ans. I paid for mine, in 1857, $25.00 per acre, and I think Mr.

Cory's was worth very near or quite as much as mine—that is, the land.

Cross-examination:

X Int. 1. Who introduced you to Mr. Ruckman?

Ans. Mr. Cory.

X Int. 2. When and where?

Ans. He introduced me to Mr. Ruckman in 1866, as near as I can remember. It was on my farm I was introduced to Mr. Ruckman. It was from middle of April to 1st of May.

X Int. 3. Why did he come to your farm?

Ans. Mr. Cory had some little business with me, I think, in regard to some seed of some kind, and Mr. Ruckman came with him.

X Int. 4. Had you ever seen Mr. Ruckman before that time? If so, when and where?

23 Ans. I had seen him, I think, before that time, but had never been made acquainted with him. I think I had seen him up about San Jose then, or at least a man said to be him. I could not say when.

X Int. 5. Did you ever see him afterwards?

Ans. My impression serves me so, but I cannot state.

X Int. 6. If so, state when and where.

Ans. Can't say.

X Int. 7. Was any one with Mr. Ruckman, aside from Mr. Cory, in 1866?

Ans. No, sir; not when they came to my place.

X Int. 8. Did Mr. Ruckman's wife come with him to Mr. Cory's?

Ans. Can't say.

X Int. 9. Did you understand that she had come with him?

Ans. I did not understand it at that time.

X Int. 10. Did you learn so afterwards?

Ans. I learned that this lady was at Mr. Cory's, but I can't say that at that particular time or at any other time. I learned it through Mr. Cory's family.

X Int. 11. At the time Ruckman and Cory were at your place was Mr. Cory farming any other lands besides the lands in question?

Ans. No, sir; I think not; if he did I didn't know it.

X Int. 12. Did Mr. Ruckman mention the lands in question at the time he was in your place; if so, how did he do it?

Ans. He did in this wise: A conversation came up about our locality there of being a nice country and about my farm being a nice one; also stated that Mr. Cory had a good farm where he was.

X Int. 13. Describe the appearance, size, &c., of Mr. Ruckman, and about his age; and if there was any peculiar marks about him, state them.

24 Ans. He was a heavy-set man, broad shoulders, blocky built, and rather of a stooped-forward appearance in sitting. I should have taken him at that time, from my recollection, to have been 50 or more years old, and I am of the impression that he had the small-pox.

X Int. 14. Why do you remember that instance 17 years afterwards?

Ans. Well, I thought he was rather a peculiar-looking man to me, and I had heard him spoken of as a wealthy man and it rather drawed my attention to him.

X Int. 15. Were you subpœnaed as a witness in this case; and, if so, by whom?

Ans. Well, Mr. Cory handed me a subpœna.

X Int. 16. Has he paid any portion of your expenses here, directly or indirectly?

Ans. Yes, sir; I told Mr. Cory I was short of means; it was very close with me, and I did not have the money at present to spare to pay my own expenses.

X Int. 17. Has not Mr. Cory spoken to you since this suit was begun about that conversation at your place?

Ans. We had talked, before this suit was ever begun, about the time this gentleman came with Mr. Cory to my house—a number of years before—in speaking about him.

X Int. 18. Why did you talk about him?

Ans. Well, Mr. Cory and I were together sometimes, and there was a suit pending for what is termed the Allwood property; sometimes, or a time or two, Mr. Cory went with me to Havana and once at Pekin, that I remember of, stating that his business was in regard to this property—that is, the Allwood property. We generally got into a general conversation about this property at Manito and talked, then, things over.

X Int. 19. Since this suit have you not talked with him about that conversation at your place?

Ans. Yes, sir; he asked me if I remembered the gentleman and what was said there, and I told him I did.

X Int. 20. Did he not tell you or repeat to you what was then said?

Ans. I do not remember, but my recollection is I told him what was said.

X Int. 21. Were you a witness in this court in relation to the property in controversy in the ejectment suit?

Ans. I was not.

X Int. 22. Have you not talked with Cory about the conversation at your place since the ejectment suit?

Ans. I have.

NATHAN NIEUKIRK.

JONATHAN C. DRAKE, being first duly sworn, deposes and says:

My name is Jonathan C. Drake; age, 45 years; reside at San Jose, Mason county, and have lived in Mason county twenty years the first of March; I am the owner now of a farm in Mason county. The farm I now own adjoins the farm in controversy in this suit.

Int. 1. If you know, state how long Mr. Cory has lived on the farm he now lives on.

Ans. Twenty-six years.

Int. 2. Were you acquainted with Elisha Ruckman in his lifetime?

Ans. Yes, sir.

Int. 3. Was he ever at your house in company with any other persons?

Ans. Yes, sir; his wife.

Int. 4. When was that?

Ans. Some time in the spring of 1866.

Int. 5. Had you a conversation with the said Mr. Ruckman at the time he was at your house in which the farm in controversy was mentioned?

Ans. Yes, sir.

Int. 6. State what the conversation was between Mr. Ruckman and yourself in reference to the farm in controversy and where on your premises it occurred.

Ans. After dinner Mr. Ruckman and myself went out to the stable which was built on the line between Mr. Cory's land and my own. Mr. Ruckman stepped up to the line fence and viewed this farm of Mr. Cory's and said that Jot had a very beautiful farm.

Int. 7. Did he suggest any improvements that could be made upon it? State the whole of the conversation.

(Objected to as leading and suggestive.)

Ans. He made the remark that he needed to improve some.

27 Int. 8. Did he in that conversation suggest any improvements that Mr. Cory ought to make? If he did, state what he said.

Ans. He said that he needed the barn and needed the home repaired up.

Int. 9. In your judgment, what was the land worth in 1858 per acre?

Ans. I should think at that time it was worth $25.00 per acre.

Int. 10. What is the familiar name of Mr. Cory in Mason county?

Ans. Some call him Jot, very few of late—some of the old men.

Int. 11. Whom did you understand he referred to as Jot in the conversation you had with him on that day?

Ans. Mr. Cory.

Int. 12. Where was Mr. Ruckman standing at the time you had the conversation with him?

Ans. Just south of the stable, leaning against my line of fence—I mean the fence between Mr. Cory's land and mine.

Cross-examination:

X Int. 1. What relation are you to Mr. Cory?

Ans. Son-in-law.

X Int. 2. Did you testify to this conversation in the ejectment suit in this suit?

Ans. No, sir.

X Int. 3. Why didn't you?

Ans. Because I was not called upon.

X Int. 4. You were a witness in that case, were you not?
Ans. Yes, sir.
X Int. 5. Mr. Cory was present at the trial, wasn't he?
Ans. Yes, sir.
X Int. 6. He then knew that you had had such a conversation with Ruckman?
Ans. I don't know whether he did or not.
X Int. 7. How had he learned it?
Ans. In general conversation.
X Int. 8. Which side of the lands in question did your land lie?
Ans. On the west.
28 X Int. 9. When were the lands first fenced?
Ans. 23 years ago.
X Int. 10. Twenty-three years ago when—what month?
Ans. I think it was June.
X Int. 11. What year?
Ans. It was in 1866, I think.
X Int. 12. Was it all fenced at that time?
Ans. I think it was.
X Int. 13. Was the fence on the west side put there at that time?
Ans. Yes, sir.
X Int. 14. Who built the fence on the west?
Ans. I do not know.
X Int. 15. When did you first become the owner of the land on the west?
Ans. 19 years next month.
X Int. 16. Describe the land you own on the west.
Ans. I own 20 acres. It runs a quarter of a mile north and south, 40 rods west.
X Int. 17. Give the congressional description.
Ans. It is the—I can't do it.
X Int. 18. What improvements were on the lands in question at that time?
Ans. A house, fenced. I don't think there was any barn or stable.
X Int. 19. Any other improvements?
Ans. I think there was an orchard.
X Int. 20. That all?
Ans. I think that was all the improvements.
X Int. 21. What has become of the orchard?
Ans. Some of the trees have died out.
X Int. 22. What became of the balance of them?
Ans. I think there — five trees yet standing.
X Int. 23. What has become of the house and barn?
Ans. House blowed down.
X Int. 24. Anybody living in it at the time?
Ans. I think not.
29 X Int. 25. What became of the material out of the house?
Ans. I think it is lying there yet.
X Int. 26. When did it blow down?

Ans. The exact year I could not tell. I should think it was about nine years ago.

X Int. 27. How far does Mr. Cory live from the land in controversy?

Ans. Perhaps 20 rods.

X Int. 28. How did Mr. Ruckman happen to come to your house at the time you have spoken?

Ans. He was there on a visit.

X Int. 29. Any one with him?

Ans. His wife.

X Int. 30. When did Cory move onto this land?

Ans. I think it was 26 years last spring.

X Int. 31. Where was his wife at the time of the conversation you have spoken of?

Ans. In the house.

X Int. 33. Did you not know at that time that the title was in Ruckman's wife?

Ans. No, sir.

X Int. 34. Did you have any conversation with her about it?

Ans. No, sir.

X Int. 35. Was she present at this conversation between you and Ruckman?

Ans. No, sir.

(Complainant objected to cross-interrogatory 9 and to cross-interrogatory 35, inclusive.)

Redirect examination:

Int. 1. State whether the land in controversy had been cultivated.

Ans. Yes, sir.

Int. 2. Since when?

—. I think since 1857.

Int. 3. State where Mr. Cory now lives.

Ans. Just north; he has 5 or 6 acres just adjoining this farm.

Int. 4. Is Mr. Cory the owner of this adjoining property?

Ans. Yes, sir.

Recross-examination:

Int. 1. Does Mr. Cory or wife own any other land adjacent to the land in question?

Ans. No, sir.

Int. 2. Near there do either of them own any; and, if so, which and which way from the land in question?

Ans. I know of no land except the 60 acres which lies directly west of my 20 acres.

Re-redirect examination:

Int. 1. Is not the 60 acres you last mentioned situated west of your tract and is not your tract between the 60 acres and the land in controversy?

Ans. Yes, sir.

Int. 2. When did Mr. Cory become the owner of the 60 acres?
Ans. I think, in 1872.

Re-recross-examination:

Int. 1. Have you seen Mr. Ruckman there since the conversation you have spoken of, in 1866?
Ans. No, sir.

J. C. DRAKE.

31 THOMAS S. MATHER, being first duly sworn, deposes and says:

My name is Thomas S. Mather; reside in Springfield, Illinois, and have resided here thirty-three years last October. I was acquainted with Elisha Ruckman in his lifetime.

Int. 1. Have you any recollection of receiving a letter from Mr. Ruckman in regard to paying the complainant some money? If so, state when you received it and the contents of the letter.

(Objected to as incompetent.)

Ans. As well as I remember some time in July or about the 1st of August—I can't state positively—I received a letter from Mr. Ruckman telling me to furnish Mr. Cory with some money and telling me to draw on him, Ruckman, for it. I wrote Mr. Cory what Mr. Ruckman had said.

Int. 2. Have you any recollection of going away that fall? If so, state when it was and where you went.

Ans. I went East in August and was gone, perhaps, a couple of months; can't tell certainly; perhaps didn't get back until last of September or first of October.

Int. 3. Can you produce the letter as having—mentioned above as received from Mr. Ruckman?

Ans. I cannot, although I have made diligent search through the office for it. During the war a great many of my papers were lost. The clerk, Mr. Clover, who had charge of my office while—in war, in the United States service, disappeared before I returned home from the army.

T. S. MATHER.

32 *Testimony of Witnesses Taken before John A. Jones, Master in Chancery of said Court, at His Office, in the City of Springfield, in said District, on 21st December, 1883, on Part of Complainant.*

WILLIAM H. DOUGHERTY, being first duly sworn, deposes and says:

My name is William H. Dougherty; age 53; reside in Mason county, near San José; my business is that of a farmer and working at carpenter work; have resided in Mason county about 22 years, and ever since then my work has been farming, and part of the time carpenter work; have been personally acquainted with Mr. Cory, the complainant, about 17 years.

Int. 1. How long, to your knowledge, has Mr. Cory been in possession of the land in controversy?

Ans. Seventeen years.

Int. 2. Were you personally acquainted with Elisha Ruckman in his lifetime?

Ans. I was introduced to him on one occasion—the only time I ever met the gentleman.

Int. 3. When was it and where was it?

Ans. In 1866, I think, at the southwest corner of the farm Cory now occupies, near Jonathan Drake's.

Int. 4. Had you a conversation with Mr. Ruckman, in the presence of Mr. Cory, on that occasion?

Ans. I did.

Int. 5. State what it was.

Ans. It was in reference to some land he wanted to sell to me up in Iroquois county. The substance of the conversation was he had quite a body of timber land up there; he wanted to sell me a portion of that land and have me look after his interest. That was the substance of the conversation. There was considerable
33 argument.

Int. 6. Go on now and state the remainder of the conversation.

(Objected to.)

Ans. We had quite a conversation. He offered me considerable of inducements to go up there on the land. I told him I had just completed a house on a place there I had rented. I further told him I didn't think it would suit me to go on this Iroquois tract of land; and, knowing him to be quite a real estate owner, I recollect asking him at the time if he had any land in that immediate vicinity he would rent me. I had this land rented for just one year. He told me he had not; he didn't own any land in that part of the county. He further insisted at some length I should go to Iroquois county, and I told him I was not able to pay for any land. He told me I was to have all the time I wanted, if I went upon the land and looked after his interests; and perhaps the next thing of any consequence in conversation was this: He referred me to his friend Cory whether or not he was a man to stand by his friends. You understand me. I can't give this *verbatim*. He said, in substance, that he was no land shark; had no sympathy with land sharks, and that he had been assisting his friend Cory in the difficulty he had had in that land, and that Cory could vouch for his reliability in case he should enter into the business relation he was suggesting. That was the substance of the business interview as I recollect it.

Int. 7. In that conversation did Mr. Ruckman or not speak of the land in controversy *and* as the property of Mr. Cory?

(Objected to as leading and suggestive.)

Ans. I understood him to be referring to the land Mr. Cory
34 then lived on; the land he now lives on.

Int. 8. What did he say about the land, in conversation with you?

(Objected to.)

Ans. He didn't say anything in any other conversation, except as I have before given you.

Int. 9. Did he or not in that conversation state who was the owner of the land in controversy and the land then occupied by Mr. Cory?

(Objected to as leading and suggestive.)

Ans. I think I told you what he said. I got the inference from him that the land belonged to Mr. Cory. I don't know that Mr. Ruckman said in so many words that this land belonged to Jonathan Cory.

Cross-examination:

X Int. 1. How long have you lived in Mason county?

Ans. About 22 years.

X Int. 2. How long did you reside from the neighborhood of the land in question?

Ans. About five years.

X Int. 3. About what period of the time was the five years?

Ans. The first five years of the twenty-two.

X Int. 4. How far do you live from the residence of William M. Duffy?

Ans. I am living now on a farm adjoining—our residences are about half a mile apart—and have lived there 15 or 16 years.

X Int. 5. What relation is Mr. Duffy to Mr. Cory?

(Objected to.)

Ans. Son-in-law, as I understand it.

X Int. 6. Have you and Mr. Duffy ever talked about this
35 controversy in any way?

(Objected to.)

Ans. We have.

X Int. 7. How did you happen to talk about it?

(Objected to.)

Ans. I just merely asked him what he thought Mr. Cory's prospects were. He said he didn't know; he thought they were very good; The old gentleman seemed hopeful.

X Int. 8. How many times did you talk with him about it?

(Objected to.)

Ans. I don't recollect of but one occasion, and that was a few days ago.

X Int. 9. Have you been subpœnaed in this case; and, if so, by whom?

Ans. No, sir.

X Int. 10. Who paid your expenses down here?

Ans. Jonathan Cory.

X Int. 11. When did you leave your residence for Dakota?

Ans. A year ago last spring.

X Int. 12. When did you return?

Ans. I returned last a week ago last Saturday morning.

X Int. 13. Have you been back there; and, if so, when?

Ans. I spent last winter in Mason county.

X Int. 14. During all the month of January were you in Mason county?

Ans. Yes, sir.

X Int. 15. Following last winter when did you leave for Dakota again?

Ans. The latter part of February.

X Int. 16. While in Dakota did you receive any letters from Jonathan Cory about this controversy?

Ans. I did not.

X Int. 17. What was your business in Dakota?

Ans. I was holding down a couple of claims there, farming, and doing carpenter work.

36 X Int. 18. Did you own any land in Mason county during your 17 years' residence there; and, if so, how much and what became of it?

Ans. Eighty acres. It was sold to satisfy a mortgage.

X Int. 19. When did you first learn you were to be a witness in this suit?

Ans. I don't know that I ever learned that at all. I first made up my mind to come and testify yesterday morning.

X Int. 20. Why did you make up your mind to come and testify?

Ans. I was solicited by Jonathan Cory to come and give my testimony as I have given it; I mean the substance of the conversation with Ruckman as I have given it.

X Int. 21. Did you and he talk over what that conversation was?

Ans. We did.

Redirect ex.:

Int. 1. How long have you been a married man?

Ans. 22 years.

Int. 2. Where have your family lived all the time?

Ans. In Mason county.

Int. 3. Where do you consider your home?

Ans. Mason county, San Jose, and have not moved my family from there.

WILLIAM H. DOUGHERTY.

37 ISAAC C. BROWN, being first duly sworn, deposes and says:

My name is Isaac C. Brown; age, 65 years; reside in Logan county; have been familiar with the land in controversy since the year 1854 or 1855, if I don't mistake. In 1856 the land was worth about five dollars an acre. The first survey for a railroad through or near the land there was in 1856 or 1858. In 1858 the land got up to fifteen or twenty dollars an acre. I have lived in the locality

where I now live about thirty years and have lived on the same place.

Int. 1. Did you ever meet Elisha Ruckman?

Ans. I think he was introduced to me; I don't remember exactly the time; I think it was after the war; it might have been in 1865—about that time.

Int. 2. In whose company was he?

Ans. I think Mr. Cory introduced him at my own residence. I think I afterwards saw him at Mr. Cory's dwelling-house.

ISAAC C. BROWN.

38 W. D. BOWERS, being first duly sworn, deposes and says:

My name is William D. Bowers; age, 60 years last April; reside at Delavan, Tazewell county; have lived in that place about three years; my business has been that of a farmer; am not in any business now; I was once the owner of the land in controversy here.

Int. 1. To whom did you sell it?

Ans. There was no party known at the time the land was supposed to be contracted to Mr. Cory; no payments were made or notes given until a certain time; to tell the truth, I don't know that I sold it to anybody.

Int. 2. Where did Mr. Cory meet you at the time of this contract of sale?

Ans. It was in Scott county, at my house.

Int. 3. When was that?

Ans. It rather seems to me it was about the year 1850. I moved to Macoupin county in 1850. It was 4 or 5 years later.

Int. 4. When did this conversation occur—that you and Mr. Cory met and contracted for the sale of this land?

(Counsel for complainant exhibited to witness letter and tax receipt to refresh his memory.)

Ans. As well as I can recollect, I think it was in 1854 or 1855; I could not say positively; it was in that neighborhood.

Int. 5. When did Mr. Cory take possession of the land under the contract of sale made between you and him?

Ans. I could not answer that question; I don't know anything about his business.

Int. 6. In a short time after the contract was made didn't you visit Mr. Cory in company with Mr. Underwood and go to
39 the house of Mr. Cory? If so, state when it was.

(Objected to, for it assumes there was a contract with Cory and it is leading.)

Ans. I can't state when it was, but I am satisfied it was but a short time. I think it must have been as much as a year, anyhow.

Int. 7. Who was in possession of the land at that time?

Ans. Mr. Cory was on the land at the time Mr. Underwood and I visited him.

Int. 8. What improvements had been made upon the land at the time you visited there with Mr. Underwood?

Ans. I think there was a house on it and some land broke.

Int. 9. Who paid you for the land and about when?

Ans. Mr. Drury paid the money for the land.

Int. 10. Who was with Mr. Drury when he paid you for the land?

Ans. Mr. Cory. I don't remember when it was.

Int. 11. When did you deliver a deed?

Ans. At the time the land was paid over.

Int. 12. Did you ever know of anybody else in this transaction, except Mr. Cory, until after the delivery of this deed?

Ans. No, sir.

Int. 13. Did Mr. Cory make a tender of any part of the money for this land before the deed was delivered? If so, state when and where it was.

Ans. I can say it was in Decatur. I can't say when it was. It was about a year before the deed was given.

Int. 14. Who drew up this deed?

Ans. It was acknowledged before Mr. Garver. I can't say who wrote it.

Int. 15. Who got this deed ready to be acknowledged?

40 Ans. I could not say whether it was Mr. Cory, Mr. Drury, or Mr. Garber, the justice.

Int. 16. When was the first time you ever heard Ruckman's name mentioned in connection with this land?

Ans. I think it was mentioned first in the deed; that was the first time that I heard it.

Int. 17. Did you ever see Mr. Ruckman?

Ans. I did not to know him.

Int. 18. Did you ever transact any business with Mr. Ruckman of any kind?

Ans. No, sir.

Int. 19. At the time Mr. Cory visited you in Scott county for the purpose of purchasing this land, didn't you then agree with him to sell the land to him for the sum that you afterwards received?

(Objected to as leading and suggestive.)

Ans. Well, I didn't agree with him at that time. I directed him to Mr. Watts, an agent of mine, and he wrote back to me he went to Mr. Watts and bought the land.

(Last part of answer objected to as improper, unless letter is produced.)

Int. 20. When did you next hear from Mr. Cory, and what did he send you?

Ans. As well as I can recollect, it was at the same time as he sent me an instrument of writing that I supposed to be a bond for a deed. I signed the bond for a deed and sent it back to Mr. Cory or Mr. Watts, my agent.

Int. 21. To whom was the bond made?

(Objected to, as the bond is the best evidence.)

Ans. As well as I can recollect, it was made to Mr. Cory.

41 Cross-examination:

Cross-int. 1. When was the first money paid to you on this land?

Ans. At the time the deed was made.

X Int. 2. Is that all the consideration you received for the land?

Ans. Yes, sir.

X Int. 3. Who was the man Drury, who paid you the consideration. I mean where he was from and for who he was acting?

Ans. I think he was from some of the Eastern States. I suppose he was acting for Mr. Cory. It is just my supposition.

X Int. 4. Was he crippled in any way; and, if so, how?

Ans. One of his arms was off.

X Int. 5. Had you ever seen him before?

Ans. No, sir.

X Int. 6. What was the consideration he paid to you?

Ans. I think it was a little over $1,200.

X Int. 7. At what place was the money paid?

Ans. It was in Whitmore, in Macon county, at the office of Squire Garver.

X Int. 8. Did you not enquire at the time why the deed was made to Elisha Ruckman?

Ans. I did not.

X Int. 9. Was there anything said about it at the time or afterwards?

Ans. Mr. Cory stated the reason why he had it made to Mr. Ruckman, but I don't remember what it was.

X Int. 10. Did *you* Drury pay you the consideration all in money? If not, what did he pay it in?

Ans. He paid it all in gold.

X Int. 11. In what did he carry the gold?

42 Ans. He had one of these hand satchels. I couldn't say certainly the gold was in there. I didn't see him take it out.

X Int. 12. Did he not say at that time to you or in your presence or hearing that he was agent for or represented Elisha Ruckman?

Ans. I don't remember that he did.

X Int. 13. How long before the deed was made was it that you and Mr. Underwood went to the house of Mr. Cory?

Ans. I think it must have been in the neighborhood of 10 or 11 months.

X Int. 14. Who built the house he was then living in on the land?

Ans. I couldn't say. There was no house on the land at the time I made the sale.

X Int. 15. How much land was broken at the time you were there with Underwood?

Ans. I haven't any idea how much; I didn't pay any attention. By Mr. Cory tying shock fodder I suppose some of it was broken.

X Int. 16. Was any one with Mr. Cory at the time of the alleged tender at Decatur?

Ans. There was, I think. I didn't know at that time, but heard afterwards it was Reed. I heard he lived in Tazewell county.

X Int. 17. What did Reed have to say about the tender?

Ans. I don't recollect he said anything.

X Int. 18. Why did Reed come along with Cory, if you know?

Ans. I do not — of my ownself what he came for.

X Int. 19. Do you from any source know what he came for?

Ans. I haven't any proof of what he came for; no one ever told me.

43 X Int. 20. Did Mr. Cory then produce any money?

Ans. He showed a little roll of money.

X Int. 21. Why did you not accept it?

Ans. I thought at the time Mr. Cory had not treated me just right in not giving notes for the payments.

X Int. 22. Where is Mr. Watts?

Ans. He is dead.

X Int. 23. Was the bond surrendered to you at the time you executed the deed or afterwards?

Ans. It was not.

X Int. 24. What became of it?

Ans. I do not know.

W. D. BOWERS.

44 Mrs. ELIZABETH CORY BUXTON, being first duly sworn, deposes and says:

My name is Mrs. Elizabeth Cory Buxton; age, 45; reside at Allan's Grove township, Macon county; have resided in Mason county 27 years this month, since we first came to the State. I am a daughter of the complainant in this suit.

Int. 1. Have you any recollection of the time when your father with his family, moved on the land in controversy? If so, state when your father took possession of the same.

Ans. He came to this county 28 years in February; he took possession of the land that spring; he broke 70 acres of land the fall before we came here; the house was put up in 1857, in the summer we moved there, on the 16th day of July, 1857—I mean the house on the farm.

Int. 2. Who built the house on the farm?

Ans. My father.

Int. 3. In your personal knowledge, how long has your father been in actual possession of the land?

Ans. Since the spring of 1856.

Int. 4. How long did your father's family live in the house you have spoken of, on the farm?

Ans. Lived there from the time we first moved there, in 1857, up to March; it will be 14 years ago this March.

Int. 5. Do you know when your father purchased the house and grounds he now lives in? If so, state when.

Ans. I think about 3 months before he moved in; there was a family living there at the time.

Int. 6. Did he purchase the property before he moved into the house?

Ans. I said about 3 months before.

Int. 7. From where did he move?

45 Ans. From the old house on the farm.

Int. 8. You will state how the property your father moved into is situated as to the farm.

Ans. It bounds the farm on the north.

Int. —. Was you acquainted with Elisha Ruckman in his lifetime?

Ans. Yes, sir.

Int. 10. How is he related to the complainant in this bill?

Ans. An own cousin; they were brother and sister's children.

Int. 11. If you had any conversation with Mr. Ruckman in his lifetime in which the land in controversy was mentioned, you will state what it was and when and where it was.

Ans. It was in parlor at the Ottawa House, in Ottawa, Illinois. It was in May, 1858, when I was going East. Mr. Ruckman knew that father and Mr. Bower had had some difficulty; he knew that Mr. Bower had refused the deed that had been tendered under agreement in 1857; also that the balance was due in October, 1858; that father's means for paying for it was out of the wheat crop. He said he had conversed with an acquaintance of father's. This man told him that wheat was a failure in Central Illinois, and he feared that father would lose his farm. He came directly to our house and remained two days. He said he supposed father would say something to him about it and he would offer him pecuniary assistance, but he did not, and he said he wished I would write to father about it; that he thought he had made a favorable selection and he did not want him to lose it. I wrote to father, and I knew nothing more until the affair was all closed and settled up.

46 Int. 12. If you had another conversation with Mr. Ruckman after this and after the delivery of the deed to him state when and where it was and the substance of the conversation.

Ans. It was December 25th, 1858, in the city of Newark, New Jersey, at the residence of my uncle, Mr. George Titus, Mr. Ruckman called on me, the first — I had seen him since the spring before. I had been teaching, and my duties as teacher, as a matter of course, kept me closely confined. In the course of conversation I thanked him for the interest he had taken in father's affairs. He then mentioned that father had taken the deed in his name. I presume he saw I was not very well pleased, because I asked him why he should do so. His answer was, father saw best to do so. That is about as far as the conversation went as would have any bearing on the case, I suppose.

Int. 13. In that conversation do — remember of him saying anything about the property going out of the family; if so, what was it?

(Objected to as leading and suggestive.)

Ans. Mr. Ruckman said he had a great deal to do in the West, and father was in a position to help him materially in his business. He said he could help him materially in his business and very easily, and pay him for the land; and, even if he did not, I will give it to

your sister Jane. My sister Jane was a little child about 11 or 12 years old. That is the whole of the conversation.

Int. 14. When he informed you that the title had been made to him and you were satisfied, what did you then say to him, and — his responses?

(Objected to as leading and suggestive.)

47 Ans. I asked him why the deed should be so taken, if a mortgage to secure the payment was not sufficient? He said father thought best to do so.

Int. 15. Was anything said then about the death of your father and what would be done in the event of his death?

(Objected to as leading and suggestive.)

Ans. He assured me then there should never be any difficulty. I said, No, not during his or father's lifetime, but in the event of the death of either unpleasant complications might arise. Oh, he said, they were both comparatively young men, even if father had a family of grown-up daughters; they would probably live many years.

Int. 16. Did he say in that conversation what he would do, in the event of the death of your father, with this land?

Ans. He didn't mention father's death in the conversation. He said he didn't intend for the land to go out of the family. He recognized the land as father's. It was father's voluntary act, having the deed made that way, and it was done without his knowledge. Ruckman did not directly say that, but that was the substance of the conversation. He said father thought best to do it that way, and led me to infer he knew nothing of it.

Int. 17. Do you know the financial condition of Mr. Ruckman in 1858, by reputation? If so, state how much he was worth at that time.

Ans. I always heard him spoken of as a very wealthy man. I have heard him spoken of as a millionaire. Whether he was or not I do not know.

48 Cross-examination:

X Int. 1. How long have you been married?

Ans. 20 years last Easter Sunday.

X Int. 2. How far have you resided from your father since you were married?

Ans. About a mile and a half.

X Int. 3. When did your father first learn that you had had this conversation with Mr. Ruckman?

Ans. The first conversation he knew about from my letter written, in obedience to Mr. Ruckman's request, after I came home after a residence of two years and nine months in New Jersey, I told him. The second conversation he never knew until that time that I knew that the deed was taken.

X Int. 4. Were you a witness in the ejectment suit mentioned in the bill?

Ans. I was not.

X Int. 5. Where did your father first move to when you came to this State?

Ans. He was here 10 months before the family came. During that time he was on the place breaking.

X Int. 6. When did your father come to the State?

Ans. He left Newark in February, 1856; we came the following December, 1856.

X Int. 7. How soon after he came to the State was it before he began breaking?

Ans. I presume it was in the breaking season. He put in 70 acres of wheat that same season; it was in when we came here.

X Int. 8. How did you know it was 70 acres?

Ans. When it was cut and measured the next harvest, I presume; that was proof positive; I didn't measure it.

49 X Int. 9. How do you know it measured 70 acres?

Ans. I heard them say so.

X Int. 10. Heard who say so?

Ans. My father and Mr. Clark Eaton owned a header in partnership and they cut for themselves and others, and when the harvesting season was closed they measured up and my father's share was put down at 70 acres.

X Int. 11. What year was it your father moved off the farm?

Ans. They ceased to live in the house 14 years next March, but he has always been in actual possession and always worked the farm.

X Int. 12. Did he build the house he moved into from this farm?

Ans. He bought it.

X Int. 13. Did he buy with the land he moved onto?

Ans. The house and land went together, I presume. I don't know how much land there is.

X Int. 14. Did your father make any repairs on the house after he bought it?

Ans. No; it was a new house; it had been built only a short time.

X Int. 15. Were you and Mr. Ruckman going East together at the time of the conversation at Ottawa?

Ans. Yes; I was under his protection.

X Int. 16. How did Mr. Ruckman know your father and Mr. Bowers had difficulty?

Ans. He visited us either in November or December, 1857. Father then told him about the tender of the deed.

50 X Int. 17. Were you present at the conversation between them?

Ans. Yes; it was at the dinner-table, the first day of his arrival.

X Int. 18. Mr. Ruckman went directly East after that conversation at Ottawa, did he?

Ans. Yes, sir.

X Int. 19. Is Mr. Ruckman living or dead; if dead, about when did he die?

Ans. He died last December, I think. I don't remember the exact day. I think it was the first part of December we received notice of his death.

X Int. 20. Was he regarded as a wealthy man from 1856 down to his death and at his death?

Ans. I never knew anything to the contrary.

X Int 21. Was Mr. Ruckman and the defendant, Margaret Ruckman, living together at his death?

Ans. I have heard not; I do not know personally.

X Int. 22. Do you know when they separated?

Ans. I do not.

MRS. L. C. BUXTON.

51 JONATHAN CORY, being first duly sworn, deposes and says,

My name is Jonathan Cory; age, 68; reside in Mason county and am the complainant in this suit; have resided in Mason county since May, 1856.

Int. 1. From whom did you purchase the land in controversy?

(Objected to, all the testimony of witness, on the ground that the testimony of complainant is incompetent.)

Ans. Mr. Willis D. Bowers.

Int. 2. When did you take possession of the land under said purchase?

Ans. About the 1st of May, 1856.

Int. 3. State all what was said between you and Mr. Bowers in the purchase of said land, and when and where it was.

(Objected to as not competent.)

Ans. I went to Mr. Bowers, in Scott county, in March, I think, in the year 1856. I spoke to Mr. Bowers about this land. He was very anxious to sell it, and fixed his terms and price. He at that time had purchased land in Macon county, and he fixed these terms to meet his payments there. I didn't buy of Mr Bowers then; didn't close with him. I had until the 1st of May the refusal of it. I went up and looked at it again and decided to take it. I drew up a contract and wrote Mr. Bowers a letter and mailed it to Willis D. Bowers, Manchester, Scott county. I didn't get an answer from Mr. Bowers for two or three weeks. Mr. Bowers wrote me he got the letter, executed the contract, and returned it as soon as he got it. He accounted for the delay that Manchester was not his post office, but Winchester was; he regretted the mistake in post office, as it might have delayed me in my im-

52 provements. He returned the contract executed and with two witnesses to it—a thousand dollars for the consideration of the land, five hundred dollars to be paid October 1st, 1857, with 10 per cent. interest from the first of May, 1856. Mr. Bowers was to give a me deed on the receipt of $500, with interest to the 1st of May. The next $500 was to be secured by personal security or by note and mortgage on this land. On the 1st day of October, 1857, I went to Mr. Bowers' house in Macon county; he was absent from home

had gone to Decatur to the fair. I met him in Decatur. I tendered him the $500 and interest, amounting altogether — $642.50; he refused to give me a deed. I saw Mr. Bowers on two occasions afterwards—the first time in Delavan and the next time at my house. The 1st day of October, 1858, in Macon county, I had a little talk with him; he concluded to take the money and give me a deed. Before he left the house he wanted me to take the deed he had made the year before. His wife was not at home; he sent for her; she came home. Mr. Bowers and his wife got in the conveyance I had there and we drove to the justice, possibly some two miles from his house. When we got to the justice he was not in; he was out on his farm at work; he was sent for, and while he was coming I was furnished with a blank and filled up the deed. The justice came in and the deed was signed and executed. I poured the money out on the table and counted it; the most of it was in $20 pieces. Mr. Bowers asked the justice to look it over and see if it was correct. There was two or three present. Mr. Drury probably looked it over.

Gold was not very plenty then. The gentlemen who went
53 with us looked it over. I gave Mr. Bowers the sack I had it in. He took charge of the money and I took the deed and left. I mailed the deed to Havana, and put in a dollar for recording, and directed them to send it to Ruckman.

(Answer objected to as not responsive to the question, and referring to the bond is not the best evidence.)

Int. 4. What became of said bond?

Ans. The bond was burned. When I got the bond from Mr. Bowers I gave it to Mr. Watts to keep. Mr. Bowers and Dr. Underwood went to Mr. Watts in the winter of 1856. They got the bond of Mr. Watts to look at. Mr. Watts handed it to Dr. Underwood and he put it in the stove. I called on Mr. Watts for the bond afterwards. He told me Dr. Underwood had burned it. That is the last I ever saw of it.

Int. 5. Who was the grantee in this deed made by Bowers?

Ans. Ruckman. I took the deed in his name.

Int. 6. State fully how you came to take the deed in Ruckman's name; give the history of the whole transaction.

Ans. Ruckman came to my house in Mason county, in the fall of 1857. I think it was about the 1st of November. He had heard of the transaction and came to see me about it, he said. He wanted to know if I would be able to meet it when it came round the next October. I told him I had plenty of wheat sown, with a reasonable crop and a fair price, to meet this obligation. I told him if the crop was a failure I shouldn't be able to meet it without help. He then told me if I wanted money he would let me have what I wanted. I asked him about the interest. He said it wouldn't

be more than six per cent. if he charged me that. He
54 came from Havana to my place; it was during court time; his suit had then commenced against Allwoods; that was the first I knew of any suit against Allwoods. He said he would want me to take charge of this case. He stayed 2 or 3 days. I took

him to Lincoln and he went home; said he would be back again the following May. He came back the following May; I think in the early part of May he came to my place, and he made inquiries about the prospects of the crop. I told him I thought mine looked favorable. I think he said he had been told the crop would be a failure throughout the entire State. He told me not to let the thing run—keep him posted up about the crops. I think we corresponded as often as twice a month. I wrote him the crop was a failure. He answered immediately, saying he had authorized Thomas S. Mather, of Springfield, to furnish what money I wanted to pay for the land. In July or August, think probably in July, I received a letter from Mr. Mather. He wrote to me that Mr. Ruckman had authorized him to — me have what money I wanted. I came to Springfield in the early part of 1858. I went to Mr. Mather's office and was informed by his clerk, or a young man in his office, that he had gone East on account of the sickness of some of his relatives, and he probably *he* would not be back in a couple of months. I went, I think, to Bunn's Bank that day and made inquiries in regard to the exchange. They told me they would charge me seven per cent., and I would have to send to St. Louis to get the gold. I got a ticket for New York by way of Chicago. I went by way of the New York Central. I went to Mr. Ruckman's house.

55 I didn't see Mr. Ruckman until evening. He then said I had plenty of time, I need not go back immediately, but to go to Mr. Bowers before I went back home. He and I made an appointment to meet in New York, at corner of Liberty and Washington streets; we met there at the appointed time; we went from there up to Greenwich Bank; he checked up a $1,000 in gold; I exchanged $40 of my money in gold; he put it all in a little shot sack and tied — up; he had an ordinary carpet sack—a black one; he put the money in the sack and some things he had with it; he packed them in snugly. We went from there to Hudson river depot; there I was introduced to Mr. Drury; he was in the depot with a satchel pretty well filled up; he was coming to Delavan to visit his daughter, Mrs. Townsend. Mr. Ruckman requested that I should help Mr. Drury in getting through, as he was a cripple. He came with me in company to Bloomington; then I left the Chicago and Alton and took the Central; he finally concluded he would go with me; I had to go to Delavan. After leaving Mr. Bowers we went to Decatur, and came to Springfield and staid over; there was no Sunday train. I spoke to Ruckman in New York about securing him that $1,000—whether he would take a mortgage or note; he said no, he did not care about either, I think, at that time; I had done something in his case; that he want- me to look at it, and the whole thing would be closed out. He and I had talked considerably about this matter and the trouble and deception that had been practiced on him. He had been so kind to come to me and offer me the money that I just concluded I would take the deed in his name. He and I had been intimately acquainted since boyhood up. I had entire confidence in the man.

(Answer objected to as not responsive to the question.)

56 Int. 7. Had Mr. Ruckman any knowledge of the execution of this deed at the time it was made?

Ans. Not any. He had no knowledge of it until he got the deed.

Int. 8. On whose motion was the deed made?

Ans. I made the deed. Ruckman knew nothing about it. It was made simply to secure the $1,000 and not in pursuance of any arrangement with Ruckman. He did not request it to be done; he did not ask it to be done.

Int. 9. What improvements did you make on the land first year you took possession?

Ans. I broke about 75 acres; sowed 70 in wheat; next year I put a house on it; that was in the year I put a house on it. In 1857 I moved in with my family before I cut the wheat.

Int. 10. Have you been in actual possession ever since?

Ans. Yes, sir; I have; and the next year I broke 40 acres more, and have been cultivating it ever since. I put a half a mile of fence on the west side, and on the north and south sides were fenced in common.

(Answer objected to as not responsive.)

Int. 11. State what improvements you have made.

Ans. I made the improvements as before stated, and, in addition to that, made a quarter of mile of hedge fence on the west; is a good fence; will turn anything without it is hogs. They get in sometimes. It is pretty hard hedging against hogs. There is a quarter of a mile of hedging on the north side which I built. There is three-quarters of the half mile of hedge on the south side. I don't know of any other improvements. It is all broke up except 10 acres which I kept for a meadow.

57 Int. 12. Who paid for all these improvements?

Ans. I did.

Int. 13. Who has paid the taxes on this land?

Ans. I have always paid them until the last year.

Int. 14. Explain why it was not paid last year.

Ans. There was no reason, except I let it run over.

Int. 15. What was the value of the land in 1856, at the time you took possession of it?

Ans. I gave $1,000 for it.

Int. 16. What was the value of the land in 1858, at the time you got the money from Mr. Ruckman?

Ans. It was worth $3,000.

Int. 17. State the reason of the rapid advance of the land.

Ans. Prospectively, the railroad. In 1856 the Petersburg & Tonica railroad was surveyed through our part of the country—clear from Tonica all the way through to Jacksonville. In 1858 it was understood the railroad was a fixture; do not remember about the work.

Int. 18. What is the relationship between you and Mr. Ruckman?

Ans. A cousin.

Int. 19. What has been your intimacy?

Ans. We have always been very intimate. He has always been

in the habit of visiting my father's house and my house since we kept house. He has been in the habit of spending weeks at my house, in the East and here.

Int. 20. How many had he in family?

Ans. Himself and wife; he never had any children.

Int. 21. How much was he worth in 1858?

Ans. It is merely guess-work. I think it would be safe to say half a million dollars.

58 Int. 22. If you know the business that Drury came West for, state what it was.

Ans. All I know he came West for was to visit his daughter at Delavan.

Int. 23. If you had any conversation with Ruckman in his lifetime after you had Bowers make the deed to him in reference to the conveyance of land to Margaret Hopping, state when it was and where it was and the conversation.

(Objected to as incompetent.)

Ans. Well, I think the first conversation I ever had with Ruckman was when he and his wife came West; I think it was in 1866. It was at my place in Mason county. I think I had got an inkling that it was conveyed to his wife, Margaret Hoppin. He said he didn't intend to convey it to her; his intention was to convey his own lands, and he gave me his reasons for conveying them. In taking the first deposition they claimed their witness fees, and there was a fee bill issued. This was in the case of Ruckman against Allwood, and forty acres of his land was sold for that fee bill; I think it took $160 to redeem. He said he conveyed his lands to Margaret so they should not be sold again for fee bill or any other cause. He said that was why he conveyed them.

Int. 24. Did you receive a letter from Mr. Ruckman in 1864, dated May 16th, in which he directs you to pay all taxes in Mason county—that is, in Margaret Hopping's name—in which letter he specifically describes the land in her name, and in which letter he does not mention the land in controversy in this suit?

(Objected to as leading.)

59 Ans. I received such a letter.

Int. 25. Is this the letter now shown you, marked A?

Ans. It is.

Int. 26. How many years after this deed made to Margaret Hopping was this letter written?

Ans. About two years.

Int. 27. If you know, state whether that letter describes all the land owned by Ruckman at that time in Mason county.

Ans. It describes all that I know he had, except the land in litigation with the Allwoods.

Int. 28. When did you commence the practice of law?

Ans. I was admitted in 1849—in New Jersey, July 6th.

Int. 29. When was you admitted to practice in Illinois?

Ans. I was admitted in 1861 and received a license.

Int. 30. When was you admitted to practice in the district court of the United States for the southern district of Illinois?

Ans. February 27, 1868.

Int. 31. How long did you practice your profession?

Ans. I have done something at it ever since I was admitted.

Int. 32. If you did ever render any legal services to Elisha Ruckman in his lifetime, state when the employment commenced, the title of the suit or suits, and the nature of the controversies. State fully what you did.

Ans. The first suit was commenced by Ruckman in ejectment against Hugh Allwood, Benjamin Allwood, Sarah Allwood, and others. The ejectment suit was commenced at the October term, 1856; then they came in and filed their bill, and the injunction was granted at the May term, 1857. I am refreshing my memory
60 from an abstract; the case was made up and we commenced to take depositions, I think, in November. Soon after the bill was filed we commenced taking proof. Major Fullerton filed the answer to the bill. I was the associate counsel with him. I came in after he was in the case. I don't think I had anything to do with the ejectment suit. Then we commenced taking the depositions in the bill in chancery. Major Fullerton was the prosecuting attorney and did not attend to it. I think we were 32 or 33 days taking the depositions at Havana. Iwas there during the whole time. I took about all the depositions. I think there are 49 in this abstract; do not think they were all taken at that time. These witnesses were introduced by both parties. I think, probably, by equal number. Then the case was taken, by change of venue, to Peoria circuit. Then Judge Purple came in the case. I don't then recollect whether Major Fullerton had much to do with it. There was some notices to take depositions after Judge Purple came into the case, but no depositions were taken. We met several times to take them; no witnesses appeared. The case was then made up and argued before the Peoria circuit, and the decision was against Ruckman.

Int. 33. State, in detail, how many times you went to Peoria and what all you did in the case while pending in the circuit court of Peoria county.

Ans. I could not say. I think I was there altogether 25 times. I spent 25 days there. I went there in the interest of Ruckman probably half the trips I made to Peoria.

Int. 34. How far from where you live to Peoria? How did
61 you get there and back and who paid the travelling expenses and hotel bills?

Ans. 31 miles; I went to Pekin 21 miles in my own conveyance and 10 miles by railroad, and returned the same day. I went the majority of times in this way. Sometimes I went the whole way in my own conveyance; it cost me no more to take care of my horse in Peoria than in Pekin. I always paid my own expenses.

Int. 35. How many acres of land were involved in this controversy and what was the value thereof, about?

(Objected to; the record is the best evidence of the land involved.)

Ans. There was one thousand acres in one body; there was 160 in another, in Tazewell county, just across the line; the 1,000 was in Mason. I think there was two 40 acres besides—not of much value. I think they valued it all the way from $25 to $40,000.00.

Int. 36. State next step taken in the case and the history of it.

Ans. Then Ruckman wrote me to get the record of the case and get some attorney to go in with me and take an appeal. I think I spoke to James Roberts about it—I know I spoke to James Roberts about it. I wrote to Ruckman and recommended Roberts; he wrote back to me to take him in. I saw Mr. Roberts probably half a dozen times, and he examined the papers. He and I together examined the papers. I went to Pekin; it took two days to make the trip. Mr. Roberts wanted $50 fee advanced before he entered on the case. He didn't send it; he agreed to half a dozen times; he agreed to, but he didn't send it. Roberts' health gave way very soon
62 and died; and then saw Judge Dummer. He wrote me to see Judge Dummer. I saw Judge Dummer first, and afterwards met him at Petersburg. He didn't take the case. I then made some negotiations with Mr. Prettyman, and he went into the case. We then took some more depositions. I looked up the witnesses and he took the depositions at Manito. I found out the names he was after. There were two sets of harvest hands he was after. These parties lived from 20 to 25 miles from where I lived, across the country by land conveyance. I was 4 or 5 days looking up those parties from the time I left home to the time I got back. I went the next week or short time after and saw all the parties, or all I could find. I spent a week. I gave Mr. Prettyman the names and he took the depositions at Manito. Then Prettyman and I made up the case and took it to supreme court.

Int. 37. Explain why proof was taken after case was heard in Peoria court and decided against Ruckman.

Ans. We took that case to supreme court three times. They came and asked to answer over—answer anew—and the supreme court gave it to them.

Int. 38. Were the depositions referred to by you after case was at supreme court?

Ans. I think so. They raised an issue of fact and the court sent it back to be decided by jury. The question was settled by jury in the Peoria circuit. I think I was there during that term 30 days. I think Prettyman was there 20 days—probably more.

Int. 39. Were you personally present time case was submitted to the jury?

Ans. Yes, sir; I was there.

Int. 40. State in detail what was then done after the issue of fact raised by the supreme court had been determined by the
63 circuit court at Peoria; state what you did.

Ans. I, before the case went to supreme court last time, went to New York and spent ten days taking deposition of Ruckman. I was 8 days overhauling his papers and 2 days taking his deposition. Ruckman wrote to me to come and take his deposition. I refused to go; my reason was it would cost me one hundred dollars, and I

would not pay my expenses. I wrote to him to get somebody else. He answered me if I would come he would pay the expense, $100.00. He gave me $100.00 when I left. Spent 14 or 15 days taking that deposition, including the time going and coming. Why he wanted me was he didn't want anybody else overhauling his papers. I went there another time with Esther Phillips at his solicitation. I think we spent a month or thirty-five days from the time we left to the time we got back; the consequence of the delay was he was absent. I went there at another time, at his solicitation, in reference to a compromise between Mansfield Tucker and himself. He wrote me to see them and I did see them. Then I went on and saw him. He came to Peoria shortly after. Prettyman and I met him there and they entered into a negotiation that whichever case beat the land was to be divided equally between Ruckman and Mansfield. We were three or four days there. I spent in Peoria probably a week at another time. The thing was a compromise. Judge Powell was their attorney then. We agreed upon a compromise and he wouldn't carry it out. I was negotiating for Mr. Ruckman. The bill was to be dismissed and he to have judgment in ejectment and pay them $10,000.00. I could not tell in detail, but I have spent more
64 than 300 days in that case, always paying my own expenses, except the two times I have spoken of. I paid $84.00 for the record, $42.00 for the printing, $65.00 for the argument; I paid $26.00 on Logan county land; I paid $23.41 tax in Mason county. I have never been reimbursed for that.

(Answer objected to as not responsive, and to all the above correspondence referred to with Ruckman as secondary evidence.)

Int. 41. Did you receive a large number of letters from Mr. Ruckman, in his lifetime, relating to this suit?

Ans. I did.

Int. 42. Are these the letters referred to in your testimony above, and which are now shown you, marked Exhibits B, C, D, E, F, G, H, I, J, & K?

Ans. Those are the letters, except the last letter, which was written under his direction and by his clerk and marked as above exhibit, which Mr. Ruckman afterwards stated to me he had it written.

Int. 43. State what, in your judgment, the legal services you rendered Mr. Ruckman in his lifetime in the suits above mentioned are worth.

Ans. I think they are worth ten thousand dollars. I would not go through it again for $10,000. I told Mr. Ruckman three years ago—he and I met and talked the thing over—I told him it was worth $10,000.00. I wouldn't undertake such a job. He said he couldn't have had the services rendered I had for twice $10,000 by another attorney, and he would have paid it.

Int. 44. State how many years you were engaged in this service.

Ans. About fourteen years.

Cross-examination:

65 X Int. 1. What was your business before you came to Illinois?

Ans. Practicing law.

X Int. 2. Where did you practice law?

Ans. City of Newark.

X Int. 3. Did you have a partner?

Ans. No, sir.

X Int. 4. Give the street & number your office was on.

Ans. It was in an insurance building on Market street; don't remember the number.

X Int. 5. How long were you in that?

Ans. Two or three years. I was about equal time between there and Plainfield; practiced 5 or 6 years.

X Int. 6. What was the name of the insurance building or company that occupied it?

Ans. It was the Mutual Life; they owned the building.

X Int. 7. What floor were you on and the number of the room?

Ans. Was on 2nd floor; don't remember number of room.

X Int. 8. Did you rent room in your own name?

Ans. Webster and I rented the room one or two years—Andrew Webster.

X Int. 9. What were the streets next north & south of that building?

Ans. The street north, I think, was Clinton street; the street south I don't recollect; this building was near the corner of Market and Broad—north side.

X Int 10. Of whom did you and Webster rent?

Ans. Of the insurance company.

X Int. 11. What year or years?

Ans. I think 1853, 1854, and 1855.

66 X Int. 12. Where did you go from there?

Ans. I was there until I came West.

X Int. 13. Since you came to Illinois what has been your business?

Ans. I have been farming and practicing law.

X Int. 14. How far do you live from the county-seat?

Ans. 24 miles in an air line, just across four townships.

X Int. 15. What occupation did you come West to follow?

Ans. Farming.

X Int. 16. Who were present at the time you claim you paid the money to Willis D. Bowers for the land in question?

Ans. Mr. Bowers and his wife were present and a gentleman I got to take me there; I have forgotten his name; I think he is dead; Drury and the justice and probably some of his family.

X Int. 17. What occupation did the man follow you got to take you there?

Ans. He was a farmer.

X Int. 18. Was his name not Ray?

Ans. I think not; it might have been.

X Int. 19. Who carried the money to the place where it was paid to Bower?

Ans. I carried the money from the city of New York to the place where it was paid.

X Int. 20. What was Drury's destination when he left the city of New York?

Ans. Delavan.

X Int. 21. How far was Bowers place from Delavan?

Ans. I could not tell; guess it was 75 miles.

X Int. 22. Were you intimately acquainted with Drury before he came West with you?

67 Ans. Never knew Mr. Drury or saw him until I was introduced to him at the depot a few minutes before we started; never saw him before or since.

X Int. 23. Did you arrive at Delavan before going to Bowers?

Ans. I did not.

X Int. 24. Why did he not go to Delavan?

Ans. The direct line of travel from Chicago to Delavan was to Atlanta, Logan county, by rail; from Atlanta to Delavan by stage. When we arrived at Bloomington I left the Chicago & Alton line and took the Central. Mr. Drury said he was a stranger and would go around with me.

X Int. 25. How far is it from Atlanta to Delavan by the stage route?

Ans. 20 miles—a little more or less.

X Int. 26. Who paid Drury's fare around with you to Bowers'?

Ans. I didn't, and I suppose he paid his own fare.

X Int. 27. Did Drury have any valise with him?

Ans. He did, sir; he had a valise of clothes, pretty well filled; I suppose it was clothes.

X Int. 28. How many miles did Drury travel out of his way to go with you to Bowers'?

Ans. I suppose 75 or 100 miles.

X Int. 29. What time did you get into Atlanta?

Ans. Monday, probably about noon, or earlier; don't remember the time—in time to meet the stage for Delavan.

X Int. 30. How far is the land in question from Delavan?

Ans. About 8 miles by the public road.

X Int. 31. Who was Drury going to see at Delavan or in that neighborhood?

Ans. His daughter, Mrs. Townsend—at least he said he was going to see his daughter.

68 X Int. 32. Was he going there for any other purpose?

Ans. I don't know; he said he was going there to see his daughter.

X Int. 33. Did he have any other relative in that neighborhood or in this State at that time?

Ans. I don't know of any but his daughter's family; he had one or two sons come here since.

X Int. 34. Did not one of his sons come here about two weeks before Mr. Drury came?

Ans. If he did I didn't know it; I was not acquainted with Mr. Drury's family.

X Int. 35. Were you not at Drury's house in the East?

Ans. I didn't know he left any house.

X Int. 36. You then say you were not at his house?

Ans. I was not at his house; never saw Mr. Drury until I saw him at the depot.

X Int. 37. Did you ever see either one of his sons before meeting him at the depot?

Ans. I don't recollect of ever seeing any of his family. I might have met one of his sons before that time; I don't recollect it.

X Int. 38. Did there not a conversation take place between you and Ruckman and Drury, in New York, in the presence of one of Drury's boys?

Ans. Don't recollect of ever seeing one of Drury's boys at that time or for some time afterwards; if there was any conversation I don't recollect it; don't know when it could have happened, or where.

X Int. 39. How long did Drury remain in Illinois before going back home?

69 Ans. I don't know. I never saw him after separating from him at Delavan.

X Int. 40. How far did you drive from Decatur to Bowers'?

Ans. Didn't go from Decatur; went from Maroa.

X Int. 41. How far is it from that point to Bowers'?

Ans. I think 10 or 12 miles.

X Int. 42. Did you stay at that place the night before going to Bowers'?

Ans. I think we arrived at Maroa some time in the morning, and went right to Mr. Bowers' that day.

X Int. 43. Did you not stay one night with the man who drove you out?

Ans. I did the year before that.

X Int. 44. Did not you and Drury spend one night with that man?

Ans. We made connection at Bloomington with the Central; went to Maroa; got there in the early part of the day; went out to Mr. Bowers' and closed out the business; went back to Maroa; took a train and came here and staid that night in Springfield. That was Saturday night. Monday morning we took the train and went to Atlanta. There was no Sunday train at that time out of Springfield or stage going to Delavan on Sunday.

X Int. 45. Did Drury have his valise along with him when he went out to Bowers' with you?

Ans. He carried his carpet sack from New York and brought it with him all the way.

X Int. 46. You wrote the deed from Bowers to Ruckman for the land in question, did you not?

Ans. I did.

70 X Int. 47. Who filed it for record?

Ans. When the deed was executed I took the deed, wrote a

little note to the clerk, put it and the deed in an envelope, and mailed it to the clerk of Mason county.

X Int. 48. Who took it from the recorder's office and mailed it to Ruckman?

Ans. I directed it to be sent to Ruckman by mail.

X Int. 49. Are you acquainted with Esther Phillips?

Ans. I am.

X Int. 50. How long have you known her?

Ans. I have known her more than 50 years.

X Int. 51. Did she and you ever go to New York together; if so, when?

Ans. We went to New York together. I don't now recollect the date; I think it was in 1864.

X Int. 52. Did you get any money of her to go on that trip; if so, how much?

Ans. I don't think I did; she paid for her ticket and mine.

X Int. 53. Did you not tell her while on that trip that you were going down to get a deed for this land from Ruckman?

Ans. Don't recollect of ever telling her, for that was not our business; we went there for another purpose.

X Int. 54. While there, in speaking of the lands in question, did not Ruckman say that these lands belonged to him as much so as what is known as the Allwood lands?

Ans. I never heard him say it.

X Int. 55. While there and in the presence of Esther Phillips were not these lands spoken of by Ruckman in your presence?

71 Ans. They were.

X Int. 56. What did he say in the presence of Esther Phillips about these lands?

Ans. Esther Phillips and I went to New York to see Ruckman, by arrangement of all the parties, to compromise or settle up that Allwood suit. Ruckman was very desirous to get him out of the neighborhood where the Allwood land was situated. Ruckman proposed to me to trade other lands for these lands in case the Allwoods would consent to go on these lands, and we made an arrangement that if the compromise was made and the Allwoods were willing to go on these lands and make a final settlement, I consented that he could make the arrangement for these lands and give him the others for them. He asked her if she would go on these lands—I mean the lands in controversy in this suit—and she refused to move or go on them; she refused to settle and take these lands; she was there as the agent of the Allwoods.

X Int. 57. In returning home or after your trip there did you not tell Esther Phillips you had gotten a deed for the land in controversy?

Ans. I never talked to her about the deed; we didn't come home together. If I ever talked to her about the deed I don't recollect it. I don't believe I ever did.

X Int. 58. When and where did Esther Phillips receive payment for the fare she advanced for you?

Ans. I don't recollect whether it was in New York or after I returned to Illinois.

X Int. 59. Was it not at Cumming's store, in Pekin, Illinois?

72 Ans. I think not. I don't think I ever met her in Pekin; it might have been; she got her money.

X Int. 60. What was that note given for?

Ans. That note was given for $100. She got — from Elisha Ruckman, and he gave me the note to collect. She had money enough, or partially enough, to pay for a mowing machine she had bought, and she had spent that, or a part of that, in going on to see him. She was afraid she or they would be troubled in paying for the machine, and she borrowed $100.00 of him.

X Int. 62. How did you repay to Esther Phillips the railroad fare she paid for you?

Ans. I paid her the money—fourteen or fifteen dollars.

X Int. 63. From whom did you get that money?

Ans. I don't know whom I got it from. I didn't get — of Mr. Campbell.

X Int. 64. When and where did you make that repayment?

Ans. I have answered that 2 or 3 times over.

X Int. 65. Did not Ruckman pay to you at that time in New York money enough to pay your and her expenses to New York and back?

Ans. I don't know anything about her expenses; never heard anything about them. Ruckman did not pay my expenses. He gave me $100.00 to go there in New York.

X Int. 66. Are you acquainted with Samuel T. Atkins, of Logan county, Illinois?

Ans. I have no particular acquaintance with him. I have seen him half a dozen times.

X Int. 67. Did you not have a conversation with him in reference to some land he claimed in Logan county, in which Ruckman had some claim?

(Objected to.)

73 Ans. Mr. Atkins wrote me 2 or 3 times in reference to some land down near Lake Fork. I think Mr. Atkins had a tax deed. I redeemed it. I think he wanted to buy it. I told Mr. Atkins I had nothing to do with it, and gave him Mr. Ruckman's address, and I think he wrote to Mr. Ruckman about it.

X Int. 68. Did you not tell Atkins that you held your lands in controversy the same as Atkins held the land in Logan county; that Ruckman was rich, and that he could hold the lands without any further trouble, or words to that effect?

(Objected to.)

Ans. I never did. I redeemed those lands before I knew Mr. Atkins was the man. There was no similarity in holding those lands. If he held the lands by the tax title I never did.

X Int. 69. Did not Atkins have a tax title to those lands in Logan county?

Ans. I don't know that he had.

X Int. 70. Why did you not obtain a deed from Ruckman and his wife for these lands?

Ans. Ruckman had deeded this land to his wife before she was his wife. He said the laws were so in New Jersey and New York he couldn't make a second deed, but that he would get her to make the conveyance.

X Int. 71. Why did she not make the conveyance?

Ans. I don't know; I never talked to her on the subject; I had nothing to do with her.

X Int. 72. When did you learn she got the title to the land by deed?

Ans. I don't know that I knew it before 1864. I did think that I had seen it on record, but I never did. I never saw the
74 deed or record until it was produced here in court. I have never seen the record since.

X Int. 73. Why did you not perfect your title to this land by getting a deed either from her or Ruckman or through court?

Ans. I told Ruckman that if I didn't get title I would get one through the court. He didn't want me to do this; always said he would give me title. My family objected to my bringing suit against him. He didn't want suit brought. We had always been intimate, and he said the title should be arranged.

X Int. 74. When did he make the above statement to you?

Ans. He made it at different times from 1864 to 1870; probably later.

X Int. 75. Did you personally cross-examine Mr. Ruckman when his deposition was taken in the ejectment suit enjoined in this case?

Ans. I was there when his deposition was taken. The day fixed to take deposition he didn't appear. He was unwell and unable to be out. The commissioner went up to his place, 20 or 25 miles above New York, to his house, and he wasn't able to have his deposition taken, and it was 10 days or 2 weeks before he was able to have it taken—probably not more than a week—and he was in such a bad state when it was taken that I didn't say anything to him. His speech was affected, one side of him was entirely paralyzed, and it was with a good deal of difficulty his deposition was taken.

(Answer objected to as not responsive.)

(Endorsed:) Filed December 18, 1883. J. A. Jones, clerk.

75 EXHIBIT "B."

NEWARK, *January 19th*, 1865.

Jonathan Cory.

SIR: Since I wrote you yesterday I have thought if it was hinted to *to* the Peoria men that they might easy lose and land bought they would think best to accept my offer; but I will leave this entirely with you to manage that. If the case is reversed Hugh will claim the money paid in court, and then they are both gone and no

chance to get anything; and if they take my offer I have yet to go on with the appeal to get the Mackinaw & the timber land. If they see how easy Hugh can fix them they may settle to save what they can of it; ut you do as you think best.

I remain yours, &c., RUCKMAN.

EXHIBIT "C."

NEWARK, *Jan. 18th*, 1865.

Jonathan Cory:

I received yours of the 11th inst. from Pekin. I am willing to do as you have agreed with Prideman; so go on as fast as you can; but in case of an arrangement with either the Allwoods or the Peoria men he is to have a fair fee after the suit will
76 stop. Offer the men at Peoria $3,000 and the gold they put in court to settle it, cash, as the Alwoods have done so; but I would like them to get nothing. I will send the oysters and some for you on the 20th inst. My respects to your folks. Were are well and I hope to hear of the same with you.

I remain yours, ELISHA RUCKMAN.

N. B.—Write often.

EXHIBIT- "D"-"F."

CLOSTER, BERGEN CO., N. J., *Jan. 7th*, 1867.

J. Cory:

I wrote you and I sent one of your letters and one of Purple's and Fullerton that hints at my discharge of Purple. I never had Purple for attorney, but as counsel. I wrote him I did not want him on the 28 of September, 1860; so he and Fullerton wrote me on the 20th of November. Write me the date I'll be wanted at Peoria, as I intend to come. In this last letter you have not done so. I think if the error is acknowledged we can get on the rest of the case without a compromise with Mansfield; but if you
77 and Prettyman think best I will do it. I think I now understand the case.

I remain yours, E. RUCKMAN.

EXHIBIT "G."

NEW YORK, ——, 1864.

J. Corey, Esq.:

I send you enclosed the deed for Esther, as she appears to be the one selected by the parties to receive the same. I want you to hold the same until she pays up to you amount we agreed upon—$6,000—besides the necessary cost of carrying the suit through the supreme court of your State. I cannot see why Esther or any of the rest interested want you to place the deed in the hands of Mr. Coon, of Lightlaw. He may be and no doubt is as honest a man as lives, but is a stranger to me and has no agency for me, and no doubt

does not wish to be troubled with strangers' business. I know no one in Illinois as my attorney or agent in this business but you. I want you to keep all the papers in this case and carry the
78 whole thing through, as Esther and I agreed upon when she was here. After the decree is reversed and the title placed in me, then give Esther this deed on the receipt of the money. I intend to carry out, on my part, the arrangement agreed upon between us in good faith on my part, and expect the same by them. I have so much business on hand that is important to me and requires my attention to the same —. I expected when you and Esther *was* here that the thing was arrange- understandingly between us all, and I should not have my attention called to it again only to know at the close that it was all settled—not to perplex me again with it.

Yours, &c., E. RUCKMAN.

EXHIBIT "H."

CLOSTER, BERGEN CO., NEW *York, Oct.* 16, 1869.

J. Cory:

Do write me how you have got on with the Hugh Alwood case. I much want to know, as something is not right. Write me — once, in 10 days after this.

I remain yours, E. RUCKMAN.

79 EXHIBIT "I."

CLOSTER, BERGEN CO., NEW *York, Sept.* 21*st*, 1869.

Jonathan Cory:

Please write me as often as once a week how you are likely to arrange the case, as I am very desirous to know how it is. I am, on reflection, certain you are correct in your idea of the case.

I remain yours, E. RUCKMAN.

EXHIBIT "J."

CLOSTER, BERGEN COUNTY, N. *Y., January* 15, 1870.

J. Cory:

I received yours of the 10th inst. I think you are correct about the Alwoods, as they but just found out how to help me in the last end of the fight, and at no time before did they open their head to me. We are all well and hope this to find you and yours the same. Write me often; it is not much out; I wish to hear. I am certain Prettyman is not in my interest or never has been; he is under false colors.

I remain yours, E. RUCKMAN.

80 EXHIBIT "K."

CLOSTER, BERGEN CO., N. *Y., July 18th,* 1872.

J. Cory:

I received yours of the 14th inst. It is surprising how the Hugh Alwood & Mansfield case took so long to come to a head. Let me know the earliest you can as to the decision and I will attend to it as soon as I can. We are well and I hope you and yours are the same. The heat has been extreme here—102 on my porch, in the shade, two days.

I remain yours, E. RUCKMAN.

81 *Deposition of B. S. Prettyman.*

In the United States Circuit Court for the Southern District of Illinois. In Chancery.

JONATHAN CORY *vs.* MARGARET RUCKMAN.

Testimony taken before S. Murdock, a United States commissioner for said court, at the office of W. H. Campbell, in the city of Havana, Mason county, Illinois, on Friday, December —, A. D. 1883, on behalf of plaintiff.

Int. 1st. State your name, age, occupation, and place of residence.

Ans. Name, B. S. Prettyman; age, 64 years; occupation, lawyer; place of residence, Pekin, Illinois.

Inter. 2nd. Are you acquainted with the parties to this suit; if so, which ones and how long have you known them?

Ans. 2. I have known Jonathan Cory—have known him 20 or 25 years; do not know the other parties at all.

82 Int. 3d. How long have you been engaged in the practice of the law, where, and to what extent?

Ans. About 38 years; at Pekin, Illinois; in the general practice most of the time.

Int. 4. Were you acquainted with and did you know anything about the suit of Hugh Allwood, Benjamin Allwood, Sarah Allwood, *et al., vs.* Elisha Ruckman and Caroline Ruckman, which was begun in the circuit court of Mason county by Esther Phillips against said Ruckman, involving the title to lands in Mason and Tazewell county-?

Ans. I knew a suit of that character, but I do not know that is the names of the parties specifically. I first became acquainted with it after it had been taken by change venue from Mason to Peoria county, where it was tried and determined, in the circuit court of Peoria county, about 1861. Soon after that I was employed in that case on behalf of Ruckman to take it to the supreme court if reversed.

Int. 5. Who, if any one, was employed or connected with
83 you in that suit on behalf of Ruckman *et al.*?

Ans. Jonathan Cory brought the records, as made up by the

clerk of Peoria county, representing himself as employed as an attorney by Ruckman in the case and desired to retain or employ me for Ruckman to take up and reverse the case if upon examination of the records I thought it could be done. The case was taken up and reversed and Mr. Cory did a portion of searching authorities and procuring the printing to be done, and, I think, went to the supreme court on one occasion when the cause was to be heard. An issue of facts were tendered upon the errors assigned in the supreme court, and they ordered the case to be returned to Peoria county to be tried before a jury. I attended there several days in the preparation of and trial of that case, and during most of that time, if not all of it, Mr. Cory was there aiding and assisting in the trial. After
84 the trial in the circuit court the findings of the jury were certified up to the supreme court; there the counsels for Allwood asked leave to withdraw their issue of facts and join issue on the errors assigned, and, after argument and consultation of the court, their motion was refused and the case reversed and remanded. After it was remanded to the Peoria circuit court there were some depositions taken by Ruckman in support of his side of the case, and they were mostly taken for him by Mr. Cory. After that the cause was tried by the Peoria circuit court again, the date of which I don't remember now, and I think about '72 or '73 Mr. Ruckman discharged me from his employ and employed Messrs. Dearborn and Campbell. During the time I was managing the suit I suppose Mr. Cory was in the employ of Mr. Ruckman to do anything to assist in the prosecution of it he could do. While I took a leading part in the management of it, I generally associated myself with the name
85 of Mr. Cory on the papers I signed as one of the solicitors.

Int. 6. How long had the suit been pending, to the best of your recollection, prior to the time the record was brought to you by Mr. Cory, and about what year was that?

Ans. I think that the suit had been pending then about six years, as it was about '62 or '63 it was brought to me; the date I can't remember exactly.

Int. 7. Where did the Ruckmans live when you first became connected with the case, and how long did they continue to reside there, if you know?

Ans. I was advised they lived in New Jersey, near New York city. I afterwards got acquainted with Ruckman personally, and he told me he lived in New Jersey. I never knew of their living anywhere else.

Int. 8. About how many years were you connected with that suit?

Ans. Ten or eleven years.

Int. 9. During that time who was connected with you and
86 who apparently represented the Ruckmans?

Ans. There was nobody but myself and Mr. Corey that I know. Ruckman was out himself on one occasion to see me in relation to the suit, and he was also at Corey's at the same time. They

came together to my office in Pekin. Ruckman went with me up to the supreme court on one occasion.

Int. 9. Was there or not a great amount of depositions taken in the case? And state whether or not the record was extensive or otherwise.

Ans. There were a good many depositions taken in the case before I was retained in the case and quite a good many afterwards, but I cannot state just how many. I know that Corey went on to New York and New Jersey to take depositions and to procure evidence in the case.

Int. 10. About how many times did Mr. Corey, if you know, go to New York or New Jersey to take depositions or in reference to other matters in — ?

87 Int. 14. Was Mr. Corey still acting as one of the solicitors of the Ruckmans at the time when you say your connection of the case was severed, in 1871, 1872, 1873, as you say?

(Objected by defendant's counsel as leading.)

Ans. I supposed he was.

Int. 15. What is your recollection or knowledge of the case going to the supreme court after that?

Ans. I have no personal knowledge. I only know from the reports that it went.

Int. 16. Are you acquainted and have you had much experience with case- of the character of which this was—the labor, skill, and attention necessarily required to be performed and furnished in and about the same; if so, to what extent?

Ans. I have had a reasonable experience and to about the extent of other lawyers in general practice. I have conducted and assisted in conducting a good many cases of a like character, but not

88 many that were protracted to the same extent. Meantime there were other suits by other parties against Allwood and they against other parties in regard to the apportionment of the rents and profits. Those cases have been repeatedly tried and taken to the supreme court in different forms and on various questions. A portion of the same case arising out of the same subject-matter is still pending in the Peoria circuit court.

Int. 13. How many times did the suit first spoken of go before the supreme court while you and Mr. Corey were connected with it as the Ruckmans' solicitors?

Ans. It was only taken to the supreme court, properly, once. The issue of fact tendered by Allwood on the record was directed by the supreme court—was directed to be tried by a jury in the Peoria county circuit court, in vacation, and after that trial of the fact it was again certified to the supreme court, where the cause was

89 heard at the succeeding term and reversed, as I have stated in the case.

Ans. I only recollect two occasions.

Int. 11. What kind of property was involved in the case; and, if land, about how many acres, and what was its value?

(Objected to by defendant's counsel as not the best evidence.)

Ans. There was real estate involved, and there were about 1,400 acres when I first became interested in the suit. It was worth from five to ten dollars per acre, and when I quit the suit it was worth from twenty to thirty dollars per acre.

Int. 12. If there were more than one suit that grew out of the cause of litigation of the subject-matter state how many and their nature and character and give a general synopsis of the matter so as you have not already stated.

Ans. This suit I have spoken of was in chancery, to restrain a suit in ejectment begun by Ruckman against Allwood for a portion of the land. The prosecution of the ejectment suit was enjoined, and when this suit I have spoken of was determined it was
90 made perpetual in the — or required as much labor as this.

Int. 17. Was this or not a case that required a great deal of labor from the solicitors on both sides in it?

Ans. I think it did.

Int. 18. In the taking of the testimony of the witnesses that was taken in the case after you became connected with it, were they or were they not scattered, involving attendance at and in different places, and how was it in reference to the witnesses whose testimony had been taken prior to your coming into the case?

(Objected to by defendant's counsel as being leading.)

Ans. Those that were taken after I came into the case were taken at different places. Those that were taken before, I only know where they were taken from the records.

Int. 19. Do you know who paid for the records, printing, etc.? If so, state. I refer to that part that was done while you and Mr. Corey were together.

Ans. I don't know who paid for the record as made up by
91 the clerk of Peoria county. When the printing was done Corey either paid for it or furnished me the money to pay for it.

Int. 20. If you can, you may state to the best of your recollection the amount furnished or paid for by him for that item.

Ans. My recollection as to the matter of printing and expenses to the Supreme Court amounted to about $125. It was paid by Mr. Corey.

Int. 21. Are you acquainted with the value of legal services and other services such as Mr. Corey furnished in and about this suit for the length of time he was engaged with you on the suit, or either, and give what you consider reasonable and customary fees for such services?

Ans. I don't know anything about the services performed by Mr. Corey before I came into the suit. During the ten years I was in the suit Mr. Corey's services and personal expenses in attendance at court and taking depositions was worth one thousand dollars. I
92 was to have, by agreement, what was valued at and to be $2,500 for mine, but I did most of the work in court.

Cross-examination by W. H. CAMPBELL:

X Int. 1. What part or portion of the legal pleadings in the case did Mr. Corey draw or prepare?

Ans. I don't think he prepared any while I was in the case; he may have given some notices to take depositions; I think he did.

X Int. 2. Who abstracted the records and prepared the briefs and arguments for the higher courts?

Ans. I abstracted the record and prepared the brief; Mr. Corey furnished some of the authorities referred to in the brief.

X Int. 3. Who paid the expenses of the printing, etc., so far as you know?

Ans. I only know that Mr. Corey paid the money; where he got it I don't know. When Ruckman was out here he said he would furnish all the money for necessary expenses, but that he

93 did I have no knowledge—that I now remember, at any rate.

X Int. 4. What did Corey ever say to you about it?

Ans. I don't remember that Mr. Corey ever said to me that he ever got any *any* money from Mr. Ruckman, but I got the impression that Ruckman furnished him the money for expenses. When I wanted money I called upon Mr. Corey.

X Int. 5. What has been the occupation of Mr. Corey since 1856?

Ans. I think he has been a sort of a farmer-lawyer. I was told that he resided upon a farm in Mason county, and he frequently, but not generally, attended to courts in Mason and Tazewell county a few days out of most of the terms. How much and what business he had in court I don't know.

X Int. 6. To your knowledge, did he ever try a case?

Ans. I never saw him try a case in the courts, although I have known him to be interested in some as an attorney.

94 X Int. 7. Did you ever hear him examine a witness or make an argument in the courts?

Ans. I never hear- him examine a witness, that I now recollect of. I did hear him make an argument.

X Int. 8. In what case did you hear him make the argument?

Ans. I don't recollect; it was some case in which he was interested as an attorney in our county.

X Int. 9. Was he not personally interested in the case?

Ans. I can't state now from my recollection whether he was or not.

X Int. 10. During your connection with this litigation for Mr. Ruckman what was Ruckman's financial condition, so far as you know or had information?

Ans. I was advised that he was good.

X Int. 11. Did you ever hear Mr. Corey say anything about his (Ruckman's) financial condition; if so, what did he say?

Ans. He said Ruckman was responsible; that he was good.

X Int. 12. Do you know of Mr. Corey's taking a deposition in the Ruckman litigation?

95 Ans. I know there were some depositions that were taken for Ruckman that were brought into court to be used in the

defense by Ruckman while I was engaged in the suit, and that I know that Corey started to go to see that they were taken.

X Int. 13. You filed the pleas in the ejectment suit in the United States court, enjoined by this suit now pending, in which we are now taking these depositions, did you not?

Ans. I filed the pleas in the ejectment suit of Margaret Ruckman in the United States court, which I suppose is the suit enjoined by this suit.

X Int. 14. Has Mr. Corey ever been recognized as a practitioner of the law in either Mason or Tazewell county?

Ans. I don't know that Mr. Corey kept any law office anywhere or did any general law business, but I supposed he was a lawyer authorized to practice, but not in the general practice, and that was about the position he was generally regarded in, so far as I know.

X Int. 15. Do you know anything more to interest either party in this suit?

Ans. Not that I know of.

B. S. PRETTYMAN.

96 Subscribed and sworn to before me this 28th day of December, 1883.

S. A. MURDOCK,
United States Commissioner for the Southern District of Illinois.

Commissioner's fees, $8.40.

Adjourned until Saturday morning, Dec. 29th, 1883.

S. A. MURDOCK,
Commissioner.

97 In the Circuit Court of the United States for the Southern District of Illinois.

MARGARET RUCKMAN *vs.* JONATHAN CORY *et al.*

In ejectment.

To said Jonathan Cory or his attorney, Benjamin S. Prettyman:

The above-named Jonathan Cory, defendant, will take notice that the said plaintiff will appear before Isaac Romaine, Esq., commissioner for the United States circuit court for the district of New Jersey, at his office, No. 245 Washington street, Jersey City, in said State of New Jersey, at 10 o'clock a. m. on the 11th day of November, A. D. 1880, or as soon thereafter as possible, at which place and time plaintiff will proceed to take the testimony, in writing, of the following witnesses, Elisha Ruckman and Margaret Ruckman, then and there to be produced in her behalf touching the matters in issue in said case, at which time and place you can be present, if you so desire, and cross-examine said witnesses.

Dated this Oct. 16, 1880.

DEARBORN & CAMPBELL,
Att'ys for Plaintiff.

Received copy of the within notice this 18th day of October 1880.

B. S. PRETTYMAN,
Att'y for Def't.

98 UNITED STATES OF AMERICA:

The President of the United States of America to Elisha Ruckman, Greeting:

You are hereby commanded that, laying aside all business and excuses, you be and appear, in your own proper person, before Isaac Romaine, a commissioner of the circuit court of the United States for the district of New Jersey, at his office, No. 245 Washington St., Jersey City, in said district, on the 11th day of November, in the year of our Lord one thousand eight hundred and eighty, at ten o'clock in the forenoon of that day, to give evidence in a certain cause now pending in the circuit court of the United States for the southern district of Illinois between Margaret Ruckman, plaintiff, and Jonathan Cory *et al.*, defendants, in a plea of ejectment, *and that* on the part of the plaintiff, and that you bring with you *and* the said Jonathan Cory or any other person in relation to the lands in dispute in the above cause.

And this you are not to omit under the penalty of five hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Trenton, in said district, this sixth day of November, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] S. D. OLIPHANT, *Clerk.*

99 *Dep. of Mar. & E. Ruck.*

United States Circuit Court, Southern District of Illinois.

MARGARET RUCKMAN *vs.* JONATHAN CORY *et al.*

In ejectment.

Examination of witnesses, &c., in the above-entitled cause on part of the plaintiff, taken before me, Isaac Romaine, a commissioner of the circuit court of the United States for the district of New Jersey and master and examiner in said court, at my office, No. 245 Washington street, Jersey City, in said district, on Thursday, the eleventh day of November, in the year 1880, at 10 o'clock in the forenoon, in presence of Jacob Weart, counsel for the plaintiff, and Jonathan Corey, one of the defendants, in person, no person appearing for the other defendants, said examination being taken pursuant to notice hereto annexed.

MARGARET RUCKMAN, the plaintiff above named, being produced and sworn on her own behalf, says:

I reside in the city, county, and State of New York. I am the

plaintiff in this suit. My maiden name was Margaret Hopping. I married Elisha Ruckman. I was married on the 25th day of January, 1864, at Hanover, Morris county, New Jersey. I am now living separate from my husband. I separated from him before this suit was commenced. Elisha Ruckman conveyed to me the lands in question before I was married.

Q. Do you know or have you now in your possession a patent for these lands issued by the United States to Jacob L. Pope September 18th, 1851?

No; I have not any. I do not know where that patent is now.

100 Q. Have you now in your possession or do you know where the deed is from Jacob L. Pope and wife to Cyrus R. Lake, dated November 23rd, 1852, for the lands in question?

No; I haven't it. I don't know where it is.

Q. Have you now in your possession or do you know where the deed is from Cyrus B. Lake to William D. Bowers, dated August 2nd, 1854, for the lands in question?

No; I haven't it. I don't know where it is. I am unable to produce those papers now.

Q. The deed from William D. Bowers and wife to Elisha Ruckman, dated October 1st, 1858, and the deed from Elisha Ruckman, dated April 4th, 1862—both deeds being for the lands in question—are those deeds now in the — of your attorneys and can you produce them for trial?

Yes.

Q. What disposition have you made of these lands, so far as the occupancy is concerned, since you have had title to the same?

I haven't made any myself. Mr. Ruckman has had charge of them for me. Mr. Cory, I believe, has been in possession of the lands. He is the defendant in this suit. I never sold or conveyed the lands to Mr. Cory; I never gave him a title in any way—none whatever. I never had any talk with Mr. Cory about the occupancy of these lands. Mr. Cory was in correspondence with Mr. Ruckman in relation to these lands while I was living with Mr. Ruckman. I couldn't tell how frequently I heard Mr. Ruckman say he had written to Mr. Cory and knew Mr. Ruckman to receive letters—I can't say how often, but quite often. I have none of Mr. Cory's letters; Mr. Ruckman had them. I don't know that I can produce

101 them. I don't remember now that I saw and read any of the letters. I think some of the letters enclosed tax receipts for the lands. I am not certain.

Q. From the knowledge which you got from Mr. Ruckman, who, you say, was acting for you, in what way did Mr. Corey occupy these lands?

(Defendant objects to the question.)

He told me that Mr. Corey was to pay the taxes and have the use of the land for the taxes that was to be the rent of the land, and he, Corey, was to see to the land.

Q. Your understanding was that the relation of landlord and tenant existed between you and Mr. Corey?

Yes.

Q. Did you have any knowledge or information from Mr. Corey himself or Mr. Ruckman that Mr. Corey had any other relation to the land than that of a tenant paying taxes and keeping the premises in order for the rent of the same?

No.

And, being cross-examined by Mr. COREY in person, she says:

I am not certain that there ever were any tax receipts received by Mr. Ruckman from Mr. Corey for these lands in question.

MARGARET RUCKMAN.

Subscribed and sworn to before me on the day and at the place and time first aforesaid.

[SEAL.] ISAAC ROMAINE,
U. S. Circuit C't Commissioner, Dist. of N. J., and Master and Examiner of said Court.

102 Not being able to complete the taking of said depositions by reason of the non-appearance of Elisha Ruckman, another witness, I adjourned the further taking of the same, by consent of said parties, until Monday, November 15th, 1880, at ten o'clock in the forenoon, at the same place, then to be continued.

At which time and place the examination was resumed in presence of the counsel for the plaintiff and the defendant, Jonathan Corey, in person.

ELISHA RUCKMAN, a witness produced on the part of the plaintiff, being duly sworn, on his oath says:

I reside in Tappan, Rockland county, New York. I am acquainted with the lands in question in this suit. They are located in the eastern part of Mason county, in the State of Illinois. I conveyed that land to Margaret Hopping some time in the year 1862, but I can't fix the date without seeing the deed. I conveyed it to her before we were married.

I have not got the patent for these lands issued by the United States to Jacob L. Pope. I don't think I ever had it. I don't know where it is. I have not in my possession a deed from Jacob L. Pope and wife to Cyrus R. Leahe, dated November 23rd, 1852, for the lands in question. I don't know where it is. I never saw it. I have not now in my possession a deed from Cyrus R. Leahe to Willis D. Bowers, dated August 2nd, 1854, for these lands. I don't know where it is. I never had it in my possession.

I have had the deed for these premises from Willis D. Bowers and wife to me dated October 1st, 1858. I don't know where it is now. I have looked for it since I was subpœnaed but I cannot find it. I think I gave it to Mrs. Ruckman with the deed I gave her.

103 I am unable to produce any of these papers now. I know Mr. Corey, the defendant in this suit. I have a recollection of writing to Mr. Corey asking him if the taxes on these lands were

paid up. I think I received a reply from him to that letter, but I have not seen it for many years; that is all the correspondence I had with him in relation to this land. I think I have some of those letters in my possession. I produce a copy of a letter written by me to Adolph Rerebaum, clerk of the *county* of Mason county, which is marked Exhibit P 1 on part of plaintiff.

Defendant objects to the offer of said exhibit.

I also produce three lefters sent to me, or my attorney, by Adolph Krebaum, dated, respectively, August 3rd, 1861, May 1st, 1862, and June 7th, 1862, which are marked Exhibits P 2, P 3, and P 4 on part of plaintiffs, and are offered in evidence.

Defendant objects to the offer of said letters.

These are all the letters I have in relation to these lands. I think I have no tax receipts for these lands, nor have I any redemption certificates for these lands. I have no other papers for these lands or in relation thereto, except those I have produced. Mr. Cory was on this land before I got the title and I allowed him to remain there, he paying the taxes; that was the only consideration.

ELISHA RUCKMAN.

Taken, subscribed, and sworn to before me on the day, at the place and time last aforesaid.

[SEAL.] ISAAC ROMAINE,
U. S. Circuit C't Comm'r, Dist. of N. J., and Master and Examiner of said Court.

104 EXHIBIT "P 1."

CLOSTER, BERGEN CO., NEW JERSEY, *May 31st*, 1-6-.

Mr. A. Krebaum.

SIR: I want you to pay the tax on all my lands in Mason county, except 1, 21, 5, that you write me is 14.88—

And your statement is	$101 96
	14 88
	87 08
And the recording of Margaret Hopping deed	1 50
	$88 58

I send you to-day by Adams express $90 in U. S. Treasury notes, and you get 5.53 from the sheriff, Mr. J. Y. Hanthon, = $95.53; and please to send me a statement of the bills and the redemption and the tax receipts and have the tax sale of 1, 21, 5, corrected, and send me the certificate of the same, as Cory says he has the receipt for the taxes of 1856, that it was sold for.

I remain yours, ELISHA RUCKMAN.

"EXHIBIT P 2."

HAVANA, MASON CO., ILL., *August 3rd, A. D.* 1861.

Elisha Ruckman, Esq., Closter, New Jersey.

DEAR SIR: Yours from the 29th July ($1.00 inclosed) came to hand. I have examined the title to the S. E. ¼ 1, 21, 5, and find it all correct and perfect in you; there is no other title made by Bowers to any person, nor is there any other kind of title on the land but yours. On examining the tax-sale records I find that said tract of land was offered for sale for the taxes of 1856, and the east side, 40 acres of the tract, was sold June 8th, 1857, to S. C. Conwell, and the taxes since 1858, except 1860 (unpaid), has been paid by Jonathan Cory, who is in possession of the land. If you have not sold the land to Cory and he holds it under the tax sale to Conwell, you had better commence proceedings at once against Cory before he can perfect his title. For any other information, please address me.

Respectfully yours, ADOLPH KREBAUM.

105 EXHIBIT "P 3."

HAVANA, MASON CO., ILL., *May 1st, A. D.* 1862.

Charles Judson, Esq., New York.

DEAR SIR: Yours from April 30th, with deed, came to hand. I have given deed to the recorder for record. Fees will be $1.50, which please remit to me and I will send deed as soon as recorded, which may be 2 or 3 weeks yet, as the recorder has a good many deeds on hand to be recorded. As the taxes remain unpaid on the lands for several years and the purchaser may not know it, I give you a statement of the same.

The S. E. ¼ of S. 1, T. 21, R. 5, is claimed by a person under a tax title, but the title is of no account. He paid the taxes for '59 & '60. The N.W. ¼ of S. 4, T. 22, R. 6, was sold for the taxes of 1859 on the 13th day of June, 1860, and the time for redemption will expire on the 13th June next. The amount to redeem will be $49.23. Now, the amount of taxes is as follows:

S. E. ¼, S. 1, T. 21, R. 5, for 1861	$14 88
N. W. ¼, S. 4, T. 22, R. 6, for '60 & '61	19 29
S. E. ¼ S. E. ¼, S. 20, T. 23, R. 7, for '59, '60, and '61	8 28
S. E. S. E. ¼, S. 20, T. 23, R. 7, '59, '60, & 61	8 28
Total tax without redemption	$50 73

The land is being advertised this week for delinquent taxes, which will add 14 cts. costs to each tract and 6 cts. more in about a month, if not paid; sale will be some time in June next. I will attend to redeeming, paying taxes, &c., and send certificate of redemption & tax receipts on receipt of the necessary funds. My charges for do-

ing so will be $2. Taxes & redemption can only be paid in gold or silver. Eastern currency or Treasury notes taken at 2 per
106 cent. discount. Drafts on New York, with discount added, will answer.

Amount of redemption		$49 23
" " taxes		50 73
" " charges		2 00
Without discount		$106 96
	14 88	
	5 57	
		20 45
		81 51

Respectfully yours, ADOLPH KREBAUM.

EXHIBIT P 4.

HAVANA, MASON CO., ILL., *June* 7, *A. D.* 1862.

Elisha Ruckman, Esq., Closter, Bergen Co., N. J.

DEAR SIR: Yours from the 29th May & also from the 31st, with $90.00 per express, came to hand. Inclosed please find receipt and redemption certificate. The law requires that taxes & redemption must be paid in specie. U. S. Treasury notes are 3 per c't discount. The taxes on the S. E. ¼, town. 21, range 5, are not paid yet. The land will be sold on the 23rd day of June, if not paid. In regard to the tax sale of 1856 on the S. E. ¼, Mr. Cory was here about 3 months ago, I think, with the receipt; but there was some mistake made in the receipt in the description of the land, I believe, but I am not certain now, and I would not correct the sale without the purchaser being present and consent- to it.

Amount of redemption	$49 23
Taxes	36 42
	$85 65
Discount, at 3 per cent.	2 57
My charges	2 00
Paid express charges	2 00
	$92 22
Amount received by express	$90 00
Amount received of sheriff	5 57
	$95 57
	92 22
Balance due you	$3 35

Which I will hand to Mr. Cory when I see him. The deed from you to Margaret Hopping was sent by Ch's Hudson from New York, and the recording fee paid by him.

Respectfully yours, ADOLPH KREBAUM.

107 I, Isaac Romaine, a commissioner of the circuit court of the United States for the district of New Jersey and master and examiner therein, do certify that in pursuance of the annexed notice came before me, at Jersey City, in the district aforesaid, Margaret Ruckman and Elisha Ruckman, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined and their examination reduced to writing and subscribed by them in my presence on the 11th and 15th days of November, 1880, respectively, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of those days, and their said depositions are now herewith returned.

And I further certify that the said Margaret Ruckman is a resident of the city, county, and State of New York, and the said Elisha Ruckman is a resident of Tappan, Rockland county, and State of New York.

Given at Jersey City, in the county of Hudson and State and district of New Jersey, this 20th day of November, A. D. 1880.

[SEAL.] ISAAC ROMAINE,
U. S. Circuit C't Comm's'r and Master and Examiner in said C't, Dist. of N. J.

(Endorsed:) Filed December 3, 1880. J. A. Jones, clerk.

108 *Warranty Deed from Willis D. Bowers to Elisha Ruckman.*

This indenture, made this first day of October, in the year of our Lord one thousand eight hundred and fifty-eight, between Willis D. Bower and Sarah S. Bower, his wife, of Macon county, Illinois, of the first part, and Elisha Ruckman, of Bergen county, State of New Jersey, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of twelve hundred and forty-one dollars and sixty-seven cents in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, has bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, and to — heirs and assigns forever all the following-described lot, piece, or parcel of land situated in the county of Mason and State of Illinois, and known and described as follows, to wit: East half of the southeast quarter, section one (1), township twenty-one (21), range five (5), containing eighty (80) acres, and west half of the southeast quarter section one (1), township twenty-one (21), range five (5), containing eighty (80) acres—in all, one hundred and sixty acres of land—together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents,

issues, and profits thereof, and all the estate, right, titles, claim, or demand whatsoever of the said party of the first part,
109 either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said Willis D. Bower & wife, party of the first part, their heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee-simple, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part have hereunto set their hand and seal the day and year first above written.

WILLIS D. BOWER. [SEAL.]
SARAH S. BOWER. [SEAL.]

Signed, sealed, and delivered in presence of—
O. S. DRURY.

STATE OF ILLINOIS, } ss:
Macon County, }

110 I, C. H. Garner, a justice of the peace in and for said county, in the State aforesaid, do hereby certify that Willis D. Bower, who is personally known to me as the real person whose name is subscribed to the above deed, appeared before me this day in person and acknowledged that he executed and delivered the said deed as his free and voluntary act for the uses and purposes therein set forth; and the said Sarah S. Bower, wife of the said Willis D. Bower, having been by me examined separate and apart from and out of hearing of her husband and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this the first day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

C. H. GARNER, *J. P.*

STATE OF ILLINOIS, *Macon County:*

I, Samuel Rea, clerk of the county court for said county, do hereby certify that C. H. Garner, Esq., whose name is subscribed to the above certificate, was, on the day the same bears date, an acting justice of the peace for said county, duly commissioned and qualified, and that as such full faith and credit are due to all his official acts, and that his signature thereto is genuine.

Given under my hand and seal of office, at Decatur, this 2nd day of October, A. D. 1878.

[SEAL.] SAMUEL REA, *Clerk.*

111 STATE OF ILLINOIS, } ss:
Macon County, }

I, Richard Ritter, clerk of the circuit court and *ex officio* recorder in and for said county and State aforesaid, do hereby certify that this deed was filed for record in my office this 5th day of August, A. D. 1859, and duly recorded in Book L of Deeds, on pages 117, '18, '19.

R. RITTER,
Clerk and ex Officio Recorder.

112 *Ruckman Deed.*

This indenture, made the twenty-fourth day of April, in the year one thousand eight hundred and sixty-two, between Elisha Ruckman, of Closter, Bergen county, New Jersey, party of the first part, and Margaret Hopping, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of four thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and to her heirs and assigns forever all the northwest quarter of section four (4), in township twenty-two (22) north, of range six (6) west, of the third principal meridian, containing one hundred and sixty acres, more or less, lying and being in Mason county and State of Illinois; also all the east half of the southeast quarter of section one (1), township twenty-one (21), range five (5), containing eighty (80) acres, and west half of the southeast quarter section one (1), township twenty-one (21), range five (5), containing eighty (80) acres—in all, one hundred and sixty acres of land; also all the southeast quarter of the northeast quarter of sec. 20, 23, N., range 7 W., containing 40 acres, and the northeast quarter of the southeast quarter of sec. 20, 23, N., range 7 W., containing 40 acres. Both last-named parcels of land are in said county of Mason and State of Illinois.

Together with all and singular the tenements, hereditaments,
113 and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, * * * property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns, forever; and the said party of the first part and his heirs the said premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against the said party of the first part, his heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

ELISHA RUCKMAN. [SEAL.]

Sealed and delivered in the presence of—
DAVID J. O'CONNELL.
CHARLES JUDSON.

The word "west" written on an erasure, the words "in said county & State" being first interlined.

UNITED STATES OF AMERICA.

STATE OF NEW YORK, } ss:
City and County of New York, }

114 Be it remembered that on this 30th day of April, in the year one thousand eight hundred and sixty-two, before me, Lucius Pitkin, a notary public, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of New York to take the acknowledgment of deeds, depositions, &c., to be used or recorded therein, personally appeared Elisha Ruckman, to me personally known to be the same and real individual named and described in, whose name is signed to, and who executed the annexed indenture or instrument in writing as party thereto, and in due form of law he acknowledged said instrument by him executed to be and that he signed, sealed, and executed the same as his free and voluntary act and deed for the considerations, uses, and purposes therein mentioned and expressed.

In witness whereof I have hereunto set my hand and official seal as such notary public this 30th day of April, A. D. 1862.

[SEAL.] LUCIUS PITKIN,
Notary Public.

(Endorsed:) Filed for record this fifth day of May, A. D. 1862, at 12 o'clock m., and duly recorded in Book O of Deeds on page 369. O. H. Wright, cl'k.

115 *Deposition of Margaret Ruckman.*

Circuit Court of the United States, Southern District of Illinois.

The United States of America to William C. Davis, Esq., of 120 Broadway, of the city of New York, in the county of New York and State of New York, or to any judge or other officer authorized to take depositions, Greeting:

We, reposing special confidence in your fidelity and provident circumspection, do hereby authorize and appoint you to take the testimony, in writing, of Margaret Ruckman, whom you are authorized and required to bring before you at such time and place as you may designate and appoint for that purpose, and at such time and place you will proceed to examine, under oath, said witness upon the interrogatories hereunto annexed at the instance of defendant in a certain cause now pending and undetermined in our circuit court of the United States for the southern district of Illinois, before the judges thereof, wherein Jonathan Cory is complainant and Margaret Ruckman is defendant.

The annexed interrogatories and cross-interrogatories, with the answers thereto, you will cause to be reduced to writing in the order in which they shall be proposed and answered; and will then cause the said deposition to be signed by the witness. At the foot
116 thereof you will add a certificate, subscribed by yourself, stating that the said deposition was sworn to and subscribed by said witness, stating the time and place when and where the said examination was taken; which said examination of said witness so taken, with your certificate thereto attached, you will send to our clerk of our circuit court of the United States for the southern district of Illinois, sealed with the names of the parties litigant endorsed thereupon, without delay, together with this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Springfield, this fifteenth day of June, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

[L. S.] J. A. JONES, *Clerk.*

Interrogatories.

JONATHAN CORY
—
MARGARET RUCKMAN. } In Chancery.

Interrogatories to be propounded to Margaret Ruckman.

Int. 1. What is your name, age, occupation, and place of residence?

Int. 2. Do you know the parties to this suit or either of them, respectively? And state what connection, if any, you had with this suit.

Int. 3. Were you ever married; if so, what was your maiden
117 name, when and where and to whom were you married?

Int. 4. Is Elisha Ruckman living or dead? If he is dead, when did he die?

Int. 5. Were you and your husband, Elisha Ruckman, living together at the time of his death? If not, how long had you been living separate?

Int. 6. Are you acquainted with or did you ever see the land in controversy in this suit? Give the number or description of the land, if you can.

Int. 7. If you had a deed for the land in controversy, state who the deed was from and was it made to you before or after your marriage.

Int. 8. Have you in your possession or control any one or more of the following-described instruments, viz: 1st, a patent from the United States to Jacob L. Pope for the land in controversy; 2nd, a deed from Jacob L. Pope and wife to Cyrus B. Lake, dated November 23rd, 1852, for the lands in question; 3rd, a deed for the lands in controversy from Cyrus B. Lake to Willis D. Bower, dated August 2nd, 1854? If you have all or any of the above-mentioned conveyances either in your possession or control, please state which you have and attach the same to your answer to this question.

Int. 9. Did you ever have in your possession or control either of the instruments referred to in the last interrogatory? If so, which one, and state, if you know, where they or either of them are.

Int. 10. Did you ever see either one or more of the instruments mentioned in the 8th interrogatory? If so, when? State
118 which one and all that you saw; who had the said instrument or instruments. Do you know where either of the said instruments are at the present time? If so, state when, and give the name or names of the person who has or have them or either of them.

Int. 11. Were you ever in Mason county, State of Illinois? If so, state how many times and what year or years were you there and how long did you remain, as near as you can recollect.

Int. 12. Who, if any one, was with you when you made the visit to said Mason county?

Int. 13. If you say your husband, Elisha Ruckman, was with you, then state at what place or with whom you stopped; who, if any one, was with you, and about how long did you stay in Mason county.

Int. 14. Where was Jonathan Cory, the complainant in this suit, living at that time?

Int. 15. If you say that he (Jonathan Cory) was living on a farm and that it is the same land in controversy in this suit, then state who owned and claimed the title to said land; and if you did, then state about how long you had owned and claimed said land.

Int. 16. Where did you and your husband reside at that time and where have you resided since?

Int. 17. If you answer in any of the preceding questions that you and Mr. Ruckman were in Mason county and at Mr. Cory's, then please state if you and Mr. Ruckman had any conversation about the land in Cory's presence and hearing or with Mr. Cory;
119 if so, state fully and particularly all that was said by — and to whom; and if Mr. Cory was present and took part in or heard said conversation, state fully—and all that Cory said.

Int. 18. In what way and upon what terms was Mr. Cory occupying the land in controversy? State fully all you know about the matter.

Int. 19. Was the land in controversy the only land in Mason county, Illinois, which you owned or held the title to, or did you have other lands?

Int. 20. Who, if any one, looked after the care and management of the land in controversy for you from the date of the deed from Ruckman to you for the land up to the year 1879?

Int. 21. When did you learn or hear, if you ever did, that the complainant (Jonathan Cory) claimed the land in controversy belonged to him, and from whom and in what way did you learn it? State fully all about it.

Int. 22. Was it before or after you and Mr. Ruckman separated?

Int. 23. Prior to the time you and your husband separated did the complainant Cory ever make any claim to you or in your presence that he (Cory) owned the land now in controversy or had any claim or interest in or to it?

Int. 24. Were you and Mr. Ruckman at Mr. Cory's in or about the year 1866? If so, did Mr. Ruckman, in your presence or hearing, say to Mr. Cory or to any other person that he (Ruckman) did not intend to convey this tract of land to you—that it was conveyed to you by mistake? If not, state what, if anything, was said either by Mr. Ruckman, Mr. Cory, or yourself about the land. State fully.

120 Int. 25. If you know anything about Mr. Ruckman sending or giving money to Mr. Cory with which to pay costs, expenses, or for attorney's fees in the litigation which Mr. Ruckman had with Sarah Allwood, Hugh M. Allwood, and Esther N. Phillips or either of them, then state how many times Mr. Ruckman gave or sent money to Cory, and the amount, and state fully all you know about it.

Int. 26. Do you know any other matter or thing touching the matter in question that may tend to the benefit or advantage of the defendant? If so, state the same fully and at large, or as if you had been particularly interrogated thereto.

Cross-Interrogatories to be Propounded to Margaret Ruckman.

X Int. 1. Where was Elisha Ruckman at the time he made the deed to you for the land in controversy, and when and where did he record the same?

X Int. 2. Where was you at the time the said deed was made and recorded?

X Int. 3. How long after making and recording of said deed was it before you knew of the existence of said deed?

X Int. 4. Was said deed made before or after your marriage to the said Elisha Ruckman, and, if before, how long before?

X Int. 5. If you paid any consideration for the said land to the said Elisha Ruckman, state how you paid and when and where you paid; also state where you got the money from that you paid, and from whom you received it, and when and where you received it.

121 JONATHAN CORY vs. MARGARET RUCKMAN. } In Chancery.

I, William C. Davis, a commissioner of deeds, duly appointed, in and for the city and county of New York, State of New York, and the commissioner named in the annexed commission, do hereby certify that on the 27th day of June, A. D. 1885, at my place of business, No. 120 Broadway, city of New York, I was attended by Margaret Ruckman, the defendant above named, who, having been first by me duly sworn, did depose and say as follows, to wit:

1. In answer to the first interrogatory she saith: Name, Ruckman; age, 58 years; occupation, gentlewoman; place of residence, No. 329 West 22nd street, New York.

2. In answer to the 2nd interrogatory: I am the defendant in this suit. I know the plaintiff and have known him for about 20 years.

3. In answer to the 3rd interrogatory she says: I was married to Elisha Ruckman January 25, 1864, at Hanover, Morris county, New Jersey. My maiden name was Margaret Hopping.

4. In answer to the 4th interrogatory she saith: Elisha Ruckman died November 5th, 1882.

5. In answer to the 5th interrogatory she saith: Elisha Ruckman, my husband, and I were not living together at the time of his death. We had been living apart from March 5th, 1879, to November 5th, 1882, when he died.

122 6. In answer to the 6th interrogatory she saith: I am acquainted with the land in controversy in this suit. I have seen it and have been upon it. It is near San Jose, in Mason county Illinois; described as the southeast quarter of section one (1), township twenty-one (21), range five (5), in the county of Mason.

7. In answer to the 7th interrogatory she saith: I had a deed to this land, which was made to me by Mr. Ruckman before I married him. I still have this deed, but not in my possession now. I sent it to Mr. Scerritt.

8. In answer to the 8th interrogatory she saith: I have not in my possession or control any of the instruments referred to in the 8th interrogatory.

9. In answer to the 9th interrogatory she saith: I never had in

my possession or control any of the instruments referred to in the 8th interrogatory. I don't know where any of them are.

10. In answer to the 10th interrogatory she saith: I never saw any of them.

11. In answer to the 11th interrogatory she saith: I was in Mason county, Illinois, but once, viz., I think in 1866 or 1867; am not positive which year. I think the month was November. I went there one Saturday and remained until the following Monday.

12. In answer to the 12th interrogatory she saith: My husband, Mr. Ruckman, was with me when I visited Mason county, Illinois.

13. In answer to the 13th interrogatory she saith: We stopped
123 at the house of Jonathan Cory, the complainant in this suit, all the time of our visit, except the brief time occupied in making two calls—one upon Mrs. Buxton, a daughter of Mr. Cory, and another call upon Mrs. Duffy, who was also a daughter of Mr. Cory. Both calls occupied all together from one to two hours.

14. In answer to the 14th interrogatory she saith: Jonathan Cory, the complainant, was at that time living upon my farm, which is the land in controversy in this suit.

15. In answer to the 15th interrogatory she saith: I owned and claimed the title to said land at the time of our visit. The deed of it was made to me in 1862, and I claimed to own it at all times after that time.

16. In answer to the 16th interrogatory she saith: At the time of our visit to Mason county my husband and I resided at Closter, Bergen county, New Jersey. In 1875 we removed to Tappan, Rockland county, New York, where we resided for three years, and then I removed to New York city, where I have lived ever since.

17. In answer to the 17th interrogatory she saith: During our visit Mr. Ruckman, Mr. Cory, and myself had some conversation in regard to this land. We three were all that were present during the conversation. We walked out together to look over the land. Mr. Ruckman said to me: "This is that farm of yours." Mr. Cory said: "Yes; and it is very valuable, for it is near a railroad station." Mr. Ruckman said: "Mr. Cory will stay on it, pay the taxes, and take care of it for the use of it." Mr. Cory said nothing, but
124 bowed his assent. That is all that was said and done, that I remember.

18. In answer to the 18th interrogatory she saith: Mr. Cory was to pay the taxes, keep up all the repairs, and to work the farm for the use of it.

19. In answer to the 19th interrogatory she saith: I owned at that time other lands in Mason county, Illinois, besides the land in controversy.

20. In answer to the 20th interrogatory she saith: Mr. Cory is the only one who looked after the interests of my land, now in controversy, from the date of the deed from Mr. Ruckman to me up to the year 1879.

21. In answer to the 21st interrogatory she saith: I first heard that Jonathan Cory claimed the land in suit from Mr. Enos S. Sterritt in a personal interview which I had with him in New York

city some time, I think, during the month of April, 1879. It is possible that shortly before that I may have written to Mr. Sterritt requesting him to say to Mr. Cory that I wanted him (Cory) to deliver me possession of the land. I do not remember definitely about this. At our interview Mr. Sterritt told me that Mr. Cory claimed to own the land. Mr. Sterritt said he had gone to see Mr. Cory about the land. When Mr. Sterritt first went to Mr. Cory's house Cory said he had a deed to the land, but later on, and before Mr. Sterritt left the house, Cory said he did not have a deed to the land, but that Mr. Ruckman had promised him (Cory) that he could have a deed whenever he wanted it. I then instructed Mr Sterritt to see the proper counsel for me be retained and the proper legal
125 proceedings taken to get possession of the land for me. That is the substance of the conversation, as I remember it.

22. In answer to the 22nd interrogatory she saith: This interview took place after Mr. Ruckman and I separated. I never heard that Cory claimed to own the land before the separation.

23. In answer to the 23rd interrogatory she saith: No, sir.

24. In answer to the 24th interrogatory she saith: Mr. Ruckman and I were at Mr. Cory's in or about the year 1866. Mr. Ruckman did not at that time or at any other time say to me or to any one else in my presence that he did not intend to convey this tract of land to me or that it was conveyed to me by mistake. No mention of the deed was made at the time of our interview or our visit to Mr. Cory's house or at any time whatever in my presence, but at that time Mr. Ruckman said that was the property he had given me.

25. In answer to the 25th interrogatory she saith: I remember of or Mr. Ruckman sending money to Cory for that purpose about three four times. I don't know how much he sent at any one time or altogether. He generally sent it by check through the mail. Mr. Ruckman spoke to me some four or five times about having sent money to Corey for that purpose.

26. In answer to the 26th interrogatory she saith: Mr. Cory managed the farm for me during the time above specified. It never paid expenses for a single year during his management. Mr.
126 Ruckman frequently spoke to me of having sent Cory money to assist him in keeping the farm out of debt. Sometimes Mr. Ruckman would send him money in bills in a letter. Mr. Ruckman frequently complained to me that Cory said he never received any letters with money in them, but that he always got the letters which contained no money. Cory's custom was to write for money on an average of three or four times a year. I paid no money for the farm. I had resided in Mr. Ruckman's family for some seventeen or eighteen years prior to our marriage. His former wife was an invalid during all that time. I took care of her and managed their household up to the year 1861, when she died. Mr. Ruckman soon after that event gave me this farm. He told me it was a present in recognition of those services.

Answers to Cross-Interrogatories.

1. In answer to the 1st cross-interrogatory she saith: I do not know where Elisha Ruckman was at that time. I think he was in New York city. I do not remember when it was recorded. I have not searched the records, but I am informed that it was recorded in the record office in Mason county, Illinois.

2. In answer to the 2nd cross-interrogatory she saith: At Closter, Bergen county, New Jersey, when it was made. I do not know where I was when it was recorded.

3. In answer to the 3rd cross-interrogatory she saith: Mr. Ruckman told me directly after it was made. He said so.

4. In answer to the 4th cross-interrogatory she saith: The deed was made to me 2 years before our marriage.

127 5. In answer to the 5th cross-interrogatory she saith: I have answered this question in the answer to the 26th interrogatory.

MARGARET RUCKMAN.

Sworn and subscribed to before me this 27th day of June, 1885.

WILLIAM C. DAVIS,
Commissioner of Deeds, New York City and County.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that William C. Davis, before whom the annexed deposition was taken, was at the time of taking the same a commissioner of deeds of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 13th day of July, 1885.

[SEAL.] PATRICK KEENAN, *Clerk.*

(Endorsed:) Filed July 15, 1885. J. A. Jones, clerk.

128 The depositions of Sarah J. Bowers, Charles M. Drury, and Esther A. Phillips, of the county of Mason and State of Illinois, witnesses of lawful age, produced, sworn, and examined on their corporal oath, on the 5th day of February, 1884, and 18th day of March, A. D. 1884, at the office of S. A. Murdock, in the city of Havana, in the county of Mason and State of Illinois, by me, S. A. Murdock, United States commissioner and notary within and for said Mason county, State of Illinois, in pursuance of the order and notice hereto annexed for the examination of the said witnesses, and by agreement of parties to be read in evidence in behalf

of the defendant on the trial of a certain suit now pending and undetermined in the United States circuit court for the southern district of Illinois, wherein Jonathan Cory is plaintiff and Margaret Ruckman is defendant.

The said Sarah J. Bowers, Charles M. Drury, and Esther A. Phillips, being first by me duly sworn, according to law, previous to the commencement of their examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as of the defendant, in relation to the matters in controversy between the said parties, so far as they should be interrogated thereto, on oath testified as follows:

129 In the Circuit Court of the United States for the Southern District of Illinois. In Chancery.

JONATHAN CORY — MARGARET RUCKMAN.

By virtue of the order of court, hereto attached, the following depositions were taken before S. A. Murdock, a special commissioner, Jonathan Corey *by* appearing in person and by attorney, and waiving formal notice the following deposition was taken in Havana, Illinois, February 5, 1884.

Mrs. SARAH J. BOWERS, who, after being first duly sworn, testified as follows:

Int. 1. State your name, age, occupation, and place of residence.

Ans. My name is Sarah J. Bowers; my age is 55 years; occupation, housekeeper; residence, Delavan, Illinois.

Int. 2. Is Willis D. Bowers your husband?

Ans. Yes, sir.

Int. 3. Are you acquainted with Jonathan Corey, complainant in this case?

Ans. Slightly; not much.

Int. 4. Do you remember the occasion of your husband and yourself making a deed to Elisha Ruckman for the land in controversy?

Ans. Yes, sir.

Int. 5. Where did you go from and to for the purpose of executing the deed?

Ans. Went from our house to Esquire Garver's.

Int. 6. Is he the squire who took the acknowledgement of the deed?

Ans. Yes, sir.

Int. 7. Who went with you from your house to the squire's?

Ans. My husband, Mr. Corey, Mr. Drury, and Mr. Ray.

130 Int. 8. Did Mr. Drury have anything with him in going from your house to the squire's; if so, what?

Ans. He had a satchel.

Int. 9. What was in that satchel?

Ans. It was money.

Int. 10. After the deed was acknowledged before the squire what, if anything, did Drury take out of that satchel?

Ans. He poured the contents of the satchel out on the table in the squire's office.

Int. 11. What were those contents?

Ans. Gold and some silver; not very much silver.

Int. 12. What were the gold and silver poured out for?

Ans. To pay my husband for the land.

Int. 13. Did your husband receive that money?

Ans. Yes, sir.

Int. 14. What did Mr. Drury do with the satchel after that?

Ans. He kept it.

Int. 15. Who took it away from the squire's office?

Ans. Mr. Drury.

Cross-examination:

X Int. 1. What year and month was it that you went to Squire Garver's and made the deed you have spoken of?

Ans. In October, 1858.

X Int. 2. Where was the deed made out and who by?

Ans. At Mr. Garver's and by him.

X Int. 3. Did Mr. Garver write the deed?

Ans. He wrote out the blanks, I suppose.

X Int. 4. How came Mr. Cory to be with you and your husband at Garver's?

Ans. He was at our house with Mr. Drury, and went with us.

131 X Int. 5. Did Mr. Corey and Mr. Drury come to your house together?

Ans. Yes, sir; they were there together.

X Int. 6. Did they come together?

Ans. I was not at home when they came; they sent for me; and when I came home they were there together.

X Int. 7. Where did you and your husband live at that time?

Ans. In Macon county.

X Int. 8. Where did Mr. Cory live?

Ans. I can't say where he lived at that time.

X Int. 9. When was the first time you saw Mr. Corey?

Ans. I guess when he came with Mr. Drury.

X Int. 10. Did you and your husband ever live in Cass or Scott county?

Ans. We lived in Scott county.

X Int. 12. Do you not recollect seeing Mr. Corey at your house while you lived in Scott county?

(Objected to as not being cross-examination.)

Ans. No, sir; I do not.

X Int. 12. Do you recollect of Mr. Cory being at your house the year before the deed was made?

(Objected to as above.)

Ans. I do not remember it.

X Int. 13. Do you remember Mr. Corey's coming to your house

about a year before the deed was made and inquired for your husband and you informed him he had gone to Decatur to the fair?

Ans. Yes, sir; I believe I do; but I did not know it was Mr. Corey at the time.

X Int. 14. When was it that your husband made the contract to sell the land?

132 (Objected to as not being cross-examination.)

Ans. I don't remember.

X Int. 15. State your best recollection—whether it was one or two years prior to the time the deed was made.

(Same objection.)

Ans. I don't recollect anything about that.

X Int. 16. Do you remember with whom he made the contract to sell the land; if so, who was it?

(Same objection.)

Ans. Mr. Joseph Watts was our agent at that time, and I don't remember anything about the contract at all.

X Int. 17. Did you ever see the land in controversy?

Ans. Yes, sir.

X Int. 18. Who was living on it at the time the deed was made?

(Same objection.)

Ans. I don't know. I heard Mr. Corey was living on it. I don't know.

X Int. 19. How long did you understand that Mr. Corey had been living on it?

(Objected — as not cross-examination and also as incompetent.)

Ans. I don't remember.

X Int. 20. Were you acquainted with Mr. Drury or had you ever seen him prior to the time at the house before going to make the deed?

Ans. No, sir; I never saw him before.

X Int. 21. Who was Mr. Ray and where did he live at the time the deed was made?

Ans. He lived about 3 miles northwest of us.

133 X Int. 22. How did he come to be there, if you know?

Ans. He fetched Mr. Drury over to our house in a wagon.

X Int. 23. Did he not at the same time bring Mr. Cory?

Ans. Yes, sir.

X Int. 24. How many satchels did Mr. Drury and Mr. Corey have with them?

Ans. Mr. Drury had a satchel; that was all the satchel that I saw.

X Int. 25. Do you or not recollect that there was one large satchel and one small one which Mr. Drury and Mr. Corey had with them?

Ans. No, sir; I do not.

X Int. 26. Was this deed you say was made at Garver's the only deed that you and your husband had made to the land?

Ans. My husband, it seemed like, made a deed and fetched it up here and fetched it back home again.

X Int. 27. When you say that he fetched it up here you mean to Mason county, do you?

A. Yes, sir.

X Int. 28. About how long was that before the deed you have first spoken of was made?

Ans. I do not remember.

X Int. 29. Was it before or after the deed which you have first spoken of was made?

Ans. It was before.

X Int. 30. State, to the best of your recollection, how long it was before the deed which you say was made at Garver's *it was* that the deed brought up to Mason county by your husband and taken back was made.

Ans. It was either one or two years, but I could not say exactly.

134 X Int. 31. To whom was that deed made?

(Objected to as not cross-examination.)

Ans. I don't remember to whom.

X Int. 32. Why did your husband bring it back after taking it to Mason county, if you know?

Ans. I guess it was the same objection, because he did not get the money.

X Int. 33. State your best recollection if that deed was not made to Mr. Corey and taken by your husband to Mason county to be delivered to Mr. Corey on his paying your husband the purchase price of the land, and that when your husband got to Mason county Mr. Corey did not have the money, and because he did not have the money your husband took it back to him.

(Same objection.)

Ans. Yes, sir.

X Int. 33. What became of that deed?

(Same objection.)

Ans. I think it was destroyed.

X Int. 34. Who by?

(Same objection.)

Ans. It don't make any difference, so it was destroyed. I don't know.

X Int. 35. Did you ever see Elisha Ruckman or his wife?

Ans. No, sir.

X Int. 36. Who made the trade with your husband for the land?

(Same objection.)

Ans. I don't remember.

X Int. 37. Is it or not your best recollection that Mr. Corey did?

(Same objection.)

135 Ans. They were corresponding, and I think more than likely it was.

S. J. BOWER.

Subscribed and sworn — this 5th day of February, A. D. 1884.

S. A. MURDOCK,
Special Commissioner.

136 CHARLES M. DRURY, who, after being duly sworn, testifies as follows:

1. State your name, age, occupation, and place of residence.

Ans. My name is Charles M. Drury; age, 45 years, past; occupation, farmer; place of residence, Delavan, Tazewell county, Illinois.

Int. 2. When did you come to Illinois?

In 1858; some time the latter part of the summer or the beginning of the fall.

3. Where have you resided since that time?

Ans. At the same place—Delavan.

4. What has been your occupation since you came to Illinois?

A farmer and stock-raiser.

5. Are you a man of family?

Yes, sir.

6. Where did you come from?

The city of Newark, New Jersey.

7. What is the name of your father?

Samuel Drury.

8. Is he living or dead; and, if dead, about when did he die?

He is dead; he died on the 7th day of September, 1868.

9. Was he a cripple?

Yes, sir; his left arm was amputated at the elbow.

10. Where did he reside in September, 1858?

He resided when at home at Newark, New Jersey.

11. Did you know Elisha Ruckman in his lifetime?

I did.

137 12. At that time was your father acquainted with him?

Yes, sir.

13. How intimately were they acquainted and how long had they been acquainted?

They were intimately acquainted as long as I can remember.

14. Was any of your father's children in his employ at any time; and, if so, what member?

My eldest brother, Samuel Drury, Jr., was in his employment as a book-keeper for a great many years; was his book-keeper and did his general business for him.

15. About what time did that employment commence and end?

Ans. Several years prior to 1858, and ended in 1858.

16. Did you and Elisha Ruckman ever have any conversation in reference to bringing money West? If so, state what he wanted you to bring the money West for.

(Question objected to as leading and suggestive and calling for incompetent testimony.)

Yes, sir; we had a conversation; it was to pay for 160 acres of land in Mason county, State of Illinois.

(Answer objected to as incompetent, the proper foundation not being laid.)

17. Did he tell you what land?

(Same objection as above.)

Yes, sir; it was the 160 acres of land his cousin, Jonathan Corey, was living on. I am not positive as to the relationship, but I think he called him a cousin.

(Same objection.)

138 18. Was your father present at the conversation?

He was.

19. If you did not bring the money West why did you not?

(Objected to for the same reason.)

My father objected to it on the grounds that I was too young to fetch that amount of money West, and that he would rather bring it himself than to see me bring the money out.

(Objected to same as above.)

20. What did Ruckman then say, if anything?

(Same objection.)

Ruckman said, Drury, if you will take out the money I will bear all your expenses there and back.

(Same objection.)

21. Which Drury did he mean, you or your father?

(Same objection.)

My father.

22. Did your father afterwards bring that money West; if so, about what time?

He did, as near as I can remember it, some time about the latter part of September or the beginning of October, 1858.

23. About when did the above conversation take place?

As near as I remember, it was two or three weeks before I came West. I came first, my father came afterwards.

Cross-examination:

1. Who was present at the time you say you had the conversation with Ruckman about bringing money West?

My father, Samuel Drury.

139 Int. 2. Anybody else?

—. I don't remember any others; there were some others standing round.

3. Was Mr. Corey present or hear any part of the conversation?

Ans. No, sir.

Int. 4. What month and year did you come out West?

Ans. It was in September, 1858, as near as I can recollect.

5. Did your father come West with you?

Ans. No, sir; I came before my father.

6. How long after you came West was it you say your father came?

Ans. I can't say exactly. I came in September. Some time about the first of October I saw my father; he came to where I was.

7. Were you married at that time or keeping house?

Ans. I was a single young man at that time.

8. With whom were you living?

Ans. I made my home with my sister, but was working for neighbors around.

9. Who came West with your father at that time?

Ans. He told me — came out in company with a man by the name of Jonathan Corey.

10. Is that the same Corey that is complainant in this suit?

Ans. I suppose it is. I did not see them in company. It is a man by the same name.

11. Where did your father and Mr. Corey part company?

Ans. That I cannot say. I did not see the gentlemen together and he did not tell me.

140 12. To what place or places in this State had your father been before he came to the place where you were stopping or before you saw him?

Ans. My father came to me—I was at one of the neighbors threshing—he came up and spoke to me. I said, Well, father, how did you get along with Mr. Ruckman's money? He then said, I got along all right; I paid for the land for Mr. Ruckman; got a deed made out in his name—Elisha Ruckman's name—and that Jonathan Corey had tried all the way from New York city to steal the satchel that had the money in belonging to Elisha Ruckman, and he did not accomplish it. He said, Here is a 20-shilling gold-piece Elisha Ruckman sent to you with his kindest regards.

13. Your father had then already paid for the land before you saw him, had he?

Ans. He had; he came across from this county or where they did the business.

14. How did he pay for it?

Ans. Elisha Ruckman told me the amount of money I would have to bring would be between $1,400 and $1,500, and he said I would have to bring it out in gold.

15. Do you know how much your father had to pay on the land?

Ans. Not the exact amount; he said he had paid for Elisha Ruckman's land and had the deed made in Mr. Ruckman's name.

16. Are you sure he told you the amount he paid?

Ans. No; he did not state the amount, only that he had paid for Mr. Ruckman's land and had the deed made and everything all straight.

141 17. Are you sure that your father told you that he paid anything on the land at all?

Ans. He paid the full amount on the land, all dues and demands, and had a deed made in Elisha Ruckman's name; that I am sure of.

18. Are you sure he said that the deed was made in Elisha Ruckman's name?

Ans. That is the words he used—he said he had the deed made in Elisha Ruckman's name.

19. Did you ever see any of the money which you say Ruckman gave your father and which he brought out and paid on the land?

Ans. After he got through with this land transaction he came where I was and staid there a week or two; he had some money in the satchel, which he said was Elisha Ruckman's.

20. Please give a direct answer to the last interrogatory.

(Here last interrogatory was read over to witness.)

Ans. No, sir; I saw none of that money whatever.

21. Do you know, of your own knowledge, that Ruckman gave your father any money to pay on the land?

—. ——.

22. Do you know, of your own knowledge, that your father ever paid for Elisha Ruckman or any one else any money on the land referred to?

Ans. Not of my own knowledge, I don't know of any at all.

23. Is not all you know about your father bringing money for Ruckman and paying it on the land merely what your father told you about it?

Ans. What my father and Elisha Ruckman told me is all I know about it.

142 (All the above and foregoing deposition of Charles M. Drury is objected to by complainant as incompetent, irrelevant, immaterial, and hearsay testimony.)

CHARLES M. DRURY.

Deposition subscribed and sworn to before Samuel A. Murdock, special commissioner for the United States circuit court for the southern district of Illinois.

SAMUEL A. MURDOCK,
Special Commissioner.

The continuation of taking these depositions is continued until the 18th day of March, A. D. 1884.

S. A. MURDOCK,
Special Commissioner.

143 MARCH 18TH, 1884.

The taking of depositions is on this date resumed.

SAMUEL A. MURDOCK,
Special Commissioner.

In the Circuit Court of the United States for the Southern District of Illinois. In Chancery.

JONATHAN COREY *vs.* MARGARET RUCKMAN.

ESTHER PHILLIPS, who, after being duly sworn, testified as follows, to wit:

1. State your name, age, occupation, and place of residence.
My name is Esther A. Phillips; Mason county, Manito, Illinois.
2. Are you acquainted with Jonathan Corey, the complainant?
Yes, sir.
3. How long have you known him?
Ans. Have known him a good many years; knew him in New Jersey before we came here.
4. Were you acquainted with Elisha Ruckman in his lifetime; if so, how long did you know him?
Yes, sir; knew him ever since he was a boy.
5. Did you and Mr. Cory ever go to New York to see Mr. Ruckman; if so, about when was it?
Yes, sir; I don't recollect exactly; *the* some time in 1864, or somewhere along there.
6. Did he and you ever go there more than —?
No, sir.
7. Who paid Mr. Corey's railroad fare to New York that time?
I bought his ticket at Peoria, through to New York.
144 8. Did he tell you when and how he would repay you this fare? If so, state.
He told me that when he got to New York he would get money of Elisha Ruckman and pay it back to me.
9. While on the road to New York did he speak of the lands in controversy? If so, what did he say?
He said he was going to get a deed for the lands he was living on. He said he had paid for it and was going to get a deed. Yes; I think it was on the road.
10. While at Ruckman's were the lands in controversy spoken of, and, if so, by whom, and what was said?
Mr. Ruckman said he owned the land that Mr. Corey lived on. He said he had paid for it; that Corey had built the house, but that the land was his (Ruckman's).
11. Who were present at that time?
Mr. Corey and Ruckman were both there and myself.
12. Was Mr. Corey in hearing distance?
Yes; he was right by.
13. What did Mr. Corey say then, if anything?
He didn't say anything.
14. While there did Ruckman, by way of compromise, offer you the lands that Corey then lived on?

(Question objected to as leading.)

No; not that I know of; I don't remember any such thing as that.
15. After your return from New York what, if anything, did

Corey say in reference to whether or not he got a deed from Ruckman for the land?

I asked him if he had got a deed. He said yes; it was all right now.

145 16. How long was that after your return from New York?

I think it was two weeks after I came home.

17. When did he repay the fare you had paid for him?

He paid me the fare in Mr. Cummings' store, as he was coming home.

Cross-examination:

1. Where was Cummings' store, where he paid you the fare; at what place?

In Pekin.

2. What did you and Corey go to New York for?

We went to see if we could make a compromise with Ruckman in our land business.

3. There was a suit then pending between Ruckman and the heirs of A. J. Alwood, in which you were interested, involving the title to some thousand or fourteen hundred acres of land, and it was for the purpose of seeing if you could compromise that suit with Ruckman that you went to New York, as you have spoken of, was it not?

Ans. He told me he thought we could make the compromise, but instead of doing that it made matters worse.

4. That suit involved the title to the land upon which you then lived, did it not, and Ruckman claimed he owned the land upon which you lived, did he not?

It was that land, and he claimed it.

5. Ruckman wanted to arrange it in some way so as to get you off the land, so he could get possession of it, didn't he?

I expect he did. I found that instead of making a compromise we were getting into a deeper hole.

6. In order to get you to move off that land, he wanted

146 you to move onto the Corey farm, and offered you that, didn't he?

Not that I know of. I don't think there was any such thing as that talked of.

8. Didn't he offer to buy you a house and lot if you would move off the land on which you then lived?

No, sir.

9. Mr. Corey was acting as one of the attorneys for Mr. Ruckman, was he not, in the suit which Ruckman had with the heirs of A. J. Alwood?

Never that I know anything of. He was agent for Mr. Ruckman; paid his taxes.

10. Why did Mr. Corey go with you to New York at the time you have spoken of?

I don't know, unless he wanted to get some money from Mr. Ruckman, and he contrived a way to get there—is all I know about that.

11. Mr. Corey attended to Mr. Ruckman's business here as agent or attorney, did he not?

Not as attorney, I don't think. He did as agent part of the time.

12. He was so acting at the time when you and he went to New York, was he not?

He might have been. I could not say for certain.

ESTHER A. PHILLIPS.

Subscribed and sworn to this 18th day of March, 1884.

S. A. MURDOCK,
Special Commissioner.

(Endorsed :) Filed July 14, 1885. J. A. Jones, clerk.

147 In the United States Circuit Court for the Southern District of Illinois. June Term, 1885. In Chancery.

JONATHAN CORY — MARGARET RUCKMAN.

Bill for relief.

To Jonathan Cory, the complainant in the above-entitled cause, and to Palmers, Robinson & Shutt, solicitors for said complainant:

You are hereby notified that on Saturday, the 27th day of June, A. D. 1885, between the hours of nine (9) o'clock in the forenoon and six (6) o'clock in the afternoon of said day, and to continue from day to day, if necessary, at the office of S. A. Murdock, in Havana, Mason county, Illinois, and before S. A. Murdock, a notary public in and for said Mason county, who, by order of said court, is authorized and appointed to take testimony and depositions in the above-entitled cause, or before some other officer authorized by law to take depositions, I shall proceed to take the depositions of Adolph Krebaum and others, to be read in evidence in the above-entitled cause, which is now pending and undetermined in the circuit court of the United States for the southern district of Illinois, said witnesses being residents of said Mason county. Said depositions will be taken on the part and behalf of the defendant in said cause. When and where you can appear and cross-examine, if you see fit.

Dated this 16th day of June, 1885.

E. A. WALLACE,
Solicitor for Defendant.

Received copy June 17, 1885.

PALMERS, ROBINSON & SHUTT,
For Comp.

148 The depositions of Adolph Krebaum and H. A. Wright, of the county of Mason and State of Illinois, witnesses, of lawful age, produced, sworn, and examined on their corporal oaths, on the 27th day of June, A. D. 1885, at the office of S. A. Murdock, in the city of Havana, in the county of Mason and State of Illinois, by me, S. A. Murdock, a U. S. commissioner and notary pub-

lic within and for said Mason county, State of Illinois, in pursuance of the notice, hereto annexed, for the examination of the said witnesses, and by agreement of parties to be read in evidence in behalf of the defendant on the trial of a certain suit now pending and undetermined in the United States circuit court for the southern district of Illinois, wherein Jonathan Corey is plaintiff and Margaret Ruckman is defendant.

The said Adolph Krebaum and H. A. Wright, who, being first duly sworn according to law, previous to the commencement of *his* examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as of the defendant, in relation to the matters in controversy between the said parties, so far as *he* should be interrogated thereto, on oath testified as follows:

In the Circuit Court of the United States for the Southern District of Illinois. In Chancery.

JONATHAN COREY *vs.* MARGARET RUCKMAN.

Testimony taken before S. A. Murdock, United States commissioner for the southern district of Illinois, at the city of Havana,
149 Illinois, the 27th day of June, A. D. 1885, on behalf of defendant.

ADOLPH KREBAUM, who, after being first duly sworn, testified as follows, to wit:

Int. 1. State your name, age, occupation, and place of residence.

—. My name is Adolph Krebaum. I am past 60 years of age; capitalist; am man of leisure; place of residence, Havana, Mason county, State of Illinois.

Int. 2. Did you ever hold any official position in Mason county, Illinois; if so, when and what?

—. I was county clerk from 1847 to 1853, and from 1856 to December, 1865.

3. Were you acquainted with or did you ever see Elisha Ruckman in his lifetime?

Ans. I have seen him. It seems to me he was here twice—once, certainly.

4. Did you ever have any correspondence with said Ruckman in reference to the lands in controversy in this suit?

Ans. I believe I have.

5. I will get you to look at two letters or papers which I now hand you, and state to whom they were addressed and by whom they were received and from whom they were received.

Ans. They were addressed to me and received by me from Elisha Ruckman, from Closter, Bergen county, New Jersey.

6. You may state their respective dates.

Ans. One is May 29, 1862, and the other May 31, 1862.

7. Will you please attach them to this your deposition and have

them marked as exhibits to your answer to this question?

150 —. I will, and mark them in their respective orders as Exhibits "A" and "B."

8. I will get you to state if you received other letters from Mr. Ruckman; if so, have you got any in your possession, in reference to the lands in controversy?

Ans. I have received other letters, but I don't think any in reference to this land—at least, I cannot find any.

9. State, to the best of your recollection, how you came to have these two letters that you have had marked as Exhibits "A" and "B."

Ans. They were sent to me by Mr. Ruckman, I suppose, is the way I have them. They were in response to letters which I had written to him.

10. Do you remember how you came to write letters to him which you say these are responses to? If so, state.

Ans. I suppose he wrote to me as county clerk to know how the taxes on the lands were or to pay the taxes.

11. I will get you to state if you made an examination and informed Mr. Ruckman in reference as to how the taxes stood on the lands?

Ans. Yes; I did.

12. Do you remember whether or not the taxes on the land in controversy had been paid or whether lands had gone to sale?

Ans. They had been sold for taxes.

13. Were the lands redeemed from taxes, and by whom and who furnished the money to make redemption?

—. The money was sent to me by Mr. Ruckman to redeem

151 the lands, and I redeemed the lands and made Mr. Ruckman the certificate as county clerk.

14. In what year was that?

—. It was in 1862.

15. I see on the back of Exhibit "A" same writing in black ink, and also in and pencil marks. You may state in whose handwriting it is.

Ans. It is my handwriting.

16. What does the words June 4–7 have reference to?

—. It means that I received the money and letter on the 4th day of June and sent him the certificate on the 7th of June of the same year the letter bears date.

17. Will you please look at your memoranda that appears on the back of the letter and state when the memoranda was made?

—. It was made on the day I sent him the certificate.

18. State how much money it was you received from Mr. Ruckman; and if you received any other moneys from other persons, state who it was and the amounts, and also state what you did with the same, and state what amount of that money you paid to redeem the lands from the tax sales.

Ans. I received by express from Mr. Ruckman $90, and from Sheriff Hanthorn $5.57. I paid to redeem the lands from the tax sales and charges $92.22, as follows: I paid to redeem the N. W. ¼ of sect. 4, town. 22, range 6, $49.23, and taxes on the same, $19.29, and the

taxes on the S. E. ¼ of the N. E. ¼ of sect. 20, town. 23, range 7, $8.28, and on the N. E. ¼ of the S. E. ¼, same section, town., and range, $8.28; also discount on currency, $2.57; my charges, $2, and
152 paid express charges, $2, and recording deed from Mr. Ruckman to Margaret Hopping, $1.50, and paid the balance to Mr. Corey.

19. I will get you to state what the amount of taxes were on the lands in controversy, namely, the S. E. ¼ of sect. 1, town. 21, range 5, at that time.

Ans. The taxes were $14.88.

20. I will get you to state how it was about the tax sale in reference to the S. E. ¼ of sect. 1, town. 21, range 5, for the taxes which stood against the lands, and what was done, as nearly as you can recollect, towards any correction or the production of any receipt for taxes referred to — either of these two exhibits.

—. I suppose the lands were sold in 1857 for the taxes of 1856. Mr. Corey produced the receipt for the same lands that were sold in error for that year, and I as county clerk canceled the sale.

21. I will get you to state how Mr. Currey came to produce the receipt.

Ans. I suppose I wrote to Mr. Ruckman that the lands were sold for taxes and he wrote to me to inform Mr. Corey of the fact, and I did so, and he produced the tax receipt.

22. I will get you to state, if you can, from your memoranda on the back of Exhibit "A" what the amount of taxes for 1861 were on the lands in controversy.

I think it was $14.88.

23. Were those taxes paid at the time you wrote to Mr. Ruckman about the amount of money necessary for him to send to you to make redemption and pay the taxes?
153 I suppose not, or I would have so written him when he wrote me to know the amount.

24. Do you remember whether or not Mr. Corey came in to see you or paid the taxes on the lands in controversy in 1862 for the year 1861 in response to your writing or notifying him as directed to do in Exhibit "A?" And, if so, state.

I don't know. I suppose the taxes were paid, or the lands would have been sold.

25. Have you the original or any copy of the letters which you wrote to Mr. Ruckman or Mr. Corey in reference to this matter?

I have not—only the memoranda on Mr. Ruckman's letter.

26. Who paid for the recording of the deed from E. Ruckman to Margaret Hopping for the land in controversy?

Mr. Ruckman sent the money to me and I paid it for him.

27. Was that at the time you were paying the taxes on Ruckman's and Margaret Hopping's lands in Mason county?

It was at the same time referred to in previous answers.

28. At the time when you paid for the recording of the said deed and Mr. Corey produced the tax receipt showing the lands had been sold in error did he, Corey, claim that he had any claim or title to the land? If so, state, and also state, if anything you know, about

Corey's occupying the lands, paying the taxes, and taking care of it for the use of it.

I have no recollection of any conversation at that time and no knowledge of — myself or of knowing that Mr. Corey was in possession of the lands, only what I saw from Mr. Ruckman's letter.

154 29. I will get you to state in whose handwriting is the body and signature to Exhibit "A," and the last line and signature to Exhibit "B?"

I suppose it is in Mr. Ruckman's handwriting, as I had a number of other letters from Mr. Ruckman and all in the same handwriting, and all from Ruckman in correspondence with him.

Cross-examination.

Int. 1. You received $90 from Ruckman, $5.54 from Hanthorn, amounting in the whole to $95.57, being all the money you received from Ruckman at that time. How did you dispose of that money?

I disposed of it as stated in answer to interrogatory 18 of the direct examination.

2. Did you pay any of that money for the redemption of any part of the land in controversy?

No, sir.

3. Did you, at that time or at any time, send Ruckman a certificate of redemption for the S. E. ¼ of sect. 1, town. 21, range 5, or any part of it?

No, I did not.

4. Did Ruckman write you inquiring of the sale of the N. W. ¼ of sect. 4, town. 22, range 6, and the taxes on the same, and the S. E. ¼ N. E. ¼ of sect. 20, town. 23, range 7, and on the N. E. ¼ S. E. ¼, same section, town., and range, what amount would it take to redeem the lands named for sale and taxes?

Yes, he did.

5. Then you made up the amount on the tracts above named and forwarded it to him without reference to any other lands?

155 Yes, I believe, I did.

6. Did you receive the deed to Margaret Hoppings at the same time that you received the money for redeeming the lands above mentioned, and were the lands redeemed and the deed to Margaret Hoppings recorded at the same date or thereabouts?

I think I recorded the deed on the 5th day of May, about a month before I received the money, because the file-marks on the deed show that date.

Int. 7. Do you recollect of ever corresponding with me (Corey) in relation to any tax sales or taxes due on the lands in controversy?

I do not; but no doubt I did.

ADOLPH KREBAUM.

Subscribed to and sworn to before me this 27th day of June, 1885.

S. A. MURDOCK,

Commissioner for Southern District of Illinois.

Re-examined:

In your answer to your cross-interrogatory 5 you say you made up the statement from the lands in sets, 4 & 20, which you sent Ruckman; did you not also include a statement of the taxes on S. E. ¼ of sect. 1, 21, 5, and that amount was included in $101.96, which is referred to in Exhibit "B," and that Ruckman notified you that Corey was to or had paid the taxes on the lands in sect. 1, 21, 5?

(Question objected to.)

I suppose I did inform him of the amount of taxes, but he did not pay it, but he wrote to me that Corey would pay the taxes on the lands in 1, 21, 5.

ADOLPH KREBAUM.

156 EXHIBIT "A" TO ADOLPH KREBAUM'S DEPOSITION.

CLOSTER, N. J., *May 29th*, 1862.

A. Krebaum.

SIR: I send you by express of Adams $85, and you get from the sheriff $5.57, *of* making $90.57, and I want you to pay the redemption of ---------- $49 23
And tax of N. W. ¼ of 4, 22, 6, for 1860 and 1861 ---------- 19 29
S. E. ¼ of the N. E. ¼, 20, 23, 7 ---------- 8 28
N. E. ¼ of S. E. ¼, 20, 23, 7 ---------- 8 28
Your charges ---------- 2 00

$87 08

The tax on 1, 21, 5, is to be paid by Jonathan Cory; he lives on it; pay to the clerk for recording the deed ---------- 1 50

$88 58

The balance of $1.99 give to Jonathan Cory, after you have deducted postage on all, and send me the redemption and the tax receipts, and J. Cory writes me he has got the receipts for the tax that 1, 21, 5, was sold for in 1857, and you write to him to bring them to you and get from you a certificate that it is all clear and no lien on the land, and then you will please to send me a certificate of the same, and *of* — think there will be no change left after you are paid for so doing, if Cory has not done so when you get this. I want you to write to him for it—his address is San José, Mason county, Illinois—as I want this made straight as soon as possible. Write me how you get on as soon as you have time to hear from Cory, and give me the full particulars. Direct to me, Closter, Bergen county, New Jersey.

157 I remain yours, ELISHA RUCKMAN.

Memoranda on Exhibit "A."

CLOSTER, *May* 29, 1862.

Elisha Ruckman, June 4–7:

Sent per express	$90 00
From sheriff	5 37
	$95 57
Redemption	49 23
Tax	36 42
	85 65
Discount	2 57
Our charges	2 00
Paid charges, express	2 00
	$92 22
	3 35
	$95 57

"EXHIBIT B."

CLOSTER, BERGEN CO., NEW JERSEY, *May* 31*st*, 1862.

Mr. A. Krebaum.

SIR: I want you to pay the tax on all of my land in Mason county except 1, 21, 5. That, you wrote me, is 14.88, and your statement is—

	$101 96
	14 88
	$87 08
And the recording of Margaret Hopping's deed	1 50
	$88 58

I send you to-day, by Adams Express, $90 in U. S. Treasury notes, and you get $5.53 from the sheriff, Mr. J. T. Hanthorn—$95.53; and please send me a statement of the bills and of the redemption and tax receipts and have the tax sale of 1, 21, 5 corrected and send me certificate of the same, as Cory says he has the receipt for the tax of 1856 that it was sold for.

I remain yours, ELISHA RUCKMAN.

(Endorsed:) Closter, May 31, 1862. Elisha Ruckman.

158 H. A. WRIGHT, who, after being duly sworn, testified as follows:

1. State your name, age, occupation, and place of residence.

—. My name is Horace A. Wright; age, 46; occupation, circuit clerk of Mason county; place of residence, Havana, Ill.

2. I will get you to state if you are acquainted with the records and titles to lands in Mason county and how long you have been acquainted with the same.

Ans. Yes, sir; I am keeper of the records at present and have been familiar with them for twenty years or more.

3. State if you have examined the titles to lands in section 1, town. 21, range 5, in Mason county, in reference to seeing whether or not any of the lands in said section, save and except S. E. ¼, ever belonged to or was in Elisha Ruckman or Margaret Hoppings.

Ans. I examined the abstract or entry book, but have not examined any titles, but found no conveyances to Elisha Ruckman or Margaret Hoppings except to the S. E. ¼ of 1, 21, 5. I found no conveyances on the balance of the section to them, or no title appearing to them in any of the balance of the section.

Cross-examination —.

H. A. WRIGHT.

Subscribed and sworn to this 27th day of June, 1885.

S. A. MURDOCK,
Commissioner Southern District Illinois.

159 STATE OF ILLINOIS, } ss:
Mason County, }

I, S. A. Murdock, a U. S. commissioner & notary within and for the said county and State, do hereby certify that in pursuance of the annexed order & notice and by agreement of parties I caused the said Adolph Krebaum and H. A. Wright, the witnesses named in the said notice & by agreement, and whose names are subscribed to the foregoing deposition, to appear before me on the 27th day of June, 1885, as in said notice specified; that previous to the commencement of the examination of the said Adolph Krebaum and H. A. Wright they were sworn according to law to testify the truth, the whole truth, and nothing but the truth relative to the matters in controversy in the said cause now pending and undetermined in the U. S. circuit court for the southern district of Illinois between Jonathan Corey, plaintiff, and Margaret Ruckman, defendant, so far as they should be interrogated concerning the same; that the said depositions were taken at my office, in the city of Havana, on the 27th day of June, 1885, between the hours of 10 o'clock a. m. and 5 o'clock p. m. of said day, and was reduced to writing by me, who am neither of the parties in said suit, nor the attorney of either, nor interested in the event of the same; that after said depositions were taken by me as aforesaid the interrogatories and the answers thereto of each witness as written down were read over to him, and that thereupon the same were signed and sworn to by said Adolph Krebaum and H. A. Wright, respectively, before me, at the place and on the day and year aforesaid, and that Jonathan Cory, the plaintiff,
160 was present in person and cross-examined the witness so far as he wished.

In witness whereof I have hereunto affixed my hand and seal this 27th day of June, 1885.

S. A. MURDOCK,
U. S. Commissioner.

(Endorsed :) Filed July 14, 1885. J. A. Jones, clerk.

161 The deposition- of Thomas Ray and C. H. Garver, of the county of Macon, State of Illinois, witnesses of lawful age, produced and examined on their corporal oaths, on the 29th day of June, A. D. 1885, at the residences of said witnesses, in the county of Macon and State of Illinois, by me, John A. Brown, master in chancery within and for said county & State, in pursuance of the reference hereto annexed for the examination of the said witnesses, to be read in evidence in behalf of the defendant on the trial of a certain suit now pending and undetermined in the United States circuit court for the southern district of Illinois, wherein Jothan Corey — plaintiff and Margaret Ruckman is defendant.

The said THOMAS RAY and C. H. GARVER, being first by me duly sworn according to law, previous to the commencement of *his* examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as of the defendant, in relation to the matters in controversy between the said parties,
162 so far as *he* should be interrogated thereto, on oath testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Thomas Ray; my age is 72 next September; I reside in Macon county, Ills., and am a farmer.

Int. 2. State what relation, if any, you sustain to this suit.

Ans. None at all.

Int. 3. State whether you are acquainted with the parties of this suit; and, if so, how long you have known them, respectively.

Ans. I have no personal acquaintance with them at all.

Int. 4. Where did you reside in 1857 or 1858?

Ans. In Macon county, Illinois.

Int. 5. Were you acquainted with or did you know at that time Willis D. Bowers and C. H. Garver or either of them?

Ans. Yes, sir; both of them.

Int. 6. About how far did you reside at that time from Mr. Bower and Garver's?

Ans. About 3 miles from Mr. Bower and about 6 miles from Mr. Garver.

163 Int. 7. Do you remember of Mr. Bower making a deed for lands in Mason county in or about the month of Oct., 1858?

Ans. Yes, sir.

Int. 8. Did you ever see the deed that was made?

Ans. Nothing only as it laid upon the table. I did not read it, nor nothing.

Int. 9. Were you present when the deed was acknowledged?

Ans. Yes, sir.

Int. 10. Who was the person before whom it was acknowledged?

Ans. Esq. C. H. Garver.

Int. 11. Where at?

Ans. At Mr. Garver's house, at Whitmore, in Macon county, Illinois.

Int. 12. I will get you to look at the deed now shown you and state whether or not that is the same instrument, if you know.

Ans. 12. Witness here shown a warrantee deed from Willis D. Bower and Sarah J. Bower to Elisha Ruckman, dated Oct. 1st, 1858, and acknowledged before C. H. Garver, justice of the peace for Macon county, and recorded in Book L, page 117, of Mason county, Ills. It looks like the same instrument that was made there,

164 but I did not have it in my hands then.

Int. 13. How did you come to be at Mr. Garver's when you say this deed or a deed was made?

Ans. I took the two persons to Mr. Garver's that was going to have the deed made to one of them.

Int. 14. Do you remember the names of the parties?

Ans. No; I don't recollect them now.

Int. 15. Where did you first see the parties you took there?

Ans. They came to my house.

Int. 16. When they came to your house what, if anything, did they want you to do?

Ans. One of the men wanted me to take them to Mr. Bower's, and if Mr. Bower would make a deed to them to take them to Esq. Garver's and fetch them back to my house.

Int. 17. Can you describe the men or either of them? If so, please do so.

Ans. One of the men had his hand off.

Int. 18. What, if anything, did either of the men have with them?

Ans. The one-armed man had a satchel with him.

Int. 19. What was in the satchel, if you know?

Ans. $1,000.00 in gold.

165 Int. 20. Did you take the two men anywhere?

Ans. I took them to Mr. Bowers.

Int. 21. When you and the two men got to Mr. Bower's, who did you see there, if any one?

Ans. Mr. Bower and his wife.

Int. 22. Was there any conversation had between Mr. Bower and the one-armed man? If so, state what the conversation was about.

Ans. The one-armed man counted out the $1,000.00 he had in the satchel and asked Mr. Bower if he would make him a warrantee deed for the land he had in Mason county. Mr. Bowers said yes.

Int. 23. What then was done?

Ans. The two men that I took to Mr. Bowers and Mr. Bowers and his wife went to Esq. Garver's, and the one-armed man put the $1,000.00 back into the satchel and took it with him.

Int. 24. Did you take the two men to Mr. Garver's from Mr. Bower's?

Ans. I did.

Int. 25. When you got to Mr. Garver's with the two men what was done there?

166 Ans. Mr. Bower and his wife signed the deed before Esq. Garver, and the one-armed man paid Mr. Bower the $1,000.00.

Int. 26. What was done with the deed?

Ans. The one-armed man wrapped it up and put it in his pocket.

Int. 27. Was there any other money paid to Mr. Bowers by any person except the one-armed man?

Ans. None.

Int. 28. Did the other man that was there with the one-armed man have the satchel which had the money in it in his possession at any time while you were with them?

Ans. He did not.

Int. 29. Did you see the man that was with the one-armed man have or handle any money *money* connected with the transaction?

Ans. No, sir; none.

Int. 30. Did you hear or see the man that was with the one-armed man ask for or offer to take the satchel that had the money in it; if so, what, if anything, did the one-armed man say or do?

Ans. I did not.

167 Int. 31. About how many were present when the money was paid at Mr. Garver's?

Ans. Four persons.

Cross-examination:

Int. 1. When did you first become acquainted with the one-armed man that you speak of and what brought him to your house?

Ans. 1. He came along with another man to my house. He wanted to go to Mr. Bower's.

Int. 2. Did you know or had you seen the other man before the day that you now allude to?

Ans. 2. Yes. sir.

Int. 3. Who was the other man, and had he been to your house before; if so, when?

Ans. He had staid all night at my house the fall before. He was a man, and that's all I can tell you.

Int. 4. Who was with him the fall before, if any one?

Ans. 4. There was a man—he told me he was from Delaware.

Int. 5. Did you learn or know from them two men the fall

168 before or from Mr. Bowers what their business was?

Ans. 5. To see about buying this land in Mason county.

Int. 6. Did you know from W. D. Bowers whether he had sold that Mason county land; and, if so, who to?

Ans. 6. I did not. I never heard him name it.

Int. 7. Had you not talked with Mr. Bowers and learned from — why he did not give the deed the year before?

Ans. 7. I did not.

Int. 8. Had you not heard from Bowers that he *that he* would not receive the money the year before because it was currency?

Ans. 8. I did not.

Int. 9. Did you not hear or know from Bowers or some of his

relatives that he would not receive the money the year before because it was currency?

Ans. 9. I heard it from his brother-in-law.

Int. 10. When you took these two men from your house to Mr. Bowers' where was Mr. Bowers met?

Ans. 10. Right at his house.

Int. 11. What was he doing at the time when we met him?

169 Was he not to work in a lot directly east of the road?

Ans. 11. Not that I recollect of, he was not.

Int. 12. Do you recollect when we met Mr. Bowers at his place that the remark was made that the 1st of October generally brought us together?

Ans. 12. I do not.

Int. 13. Where was Mrs. Bowers at the time we went there; was she home or away from home?

Ans. 13. I believe that she was at home.

Int. 14. You don't now recollect that she was away from home visiting and Mr. Bowers sent for her, do you?

Ans. 14. No, sir.

Int. 15. Did you hear Mr. Bowers say that if we would take the deed he had made the year before it would save the trouble of sending for Mrs. Bowers?

Ans. 15. I did not.

Int. 16. Did you hear Mr. Bowers say or learn from him that the year before, after the currency was tendered to him, that he was advised by his friends or relatives in Decatur to make and tender a deed that the coin was not in Decatur and could not be got at that time?

170 Ans 16. No, sir.

Int. 17. You say that the two men that came to your house in 1858 had but one satchel with them?

Ans. 17. That's all I seen—was the one.

Int. 18. How was the money carried?

Ans. 18. In that satchel.

Int 19. Was it carried loosely in the satchel?

Ans. 19. I can't say.

Int. 20. Do you recollect how Mr. Bowers carried the money from Esq. Garver's?

Ans. 20. Mr. Bowers had not left Esq. Garver's when we left.

Int. 21. You are certain that when he got to Mr. Bowers' that this one-armed man took out the money and poured it on the board, are you?

Ans. 21. He did not pour it on the board at all; he took and laid a board on the fence and counted the gold out of the satchel on it.

Int. 22. Mr. Ray, let me call your attention; you took the two men to Mr. Bowers', did you, in a farm wagon, with a wide scoop board across the wagon to ride on, and was not this money poured out on this scoop board in the wagon?

Ans. 22. I took them there. No, sir; it was not.

171 Int. 23. What kind of a board was the money put on on the fence?

Ans. 23. I can't tell what kind of a board, whether it was oak or pine. I did not inspect it to know.

Int. 24. Was it wide or narrow or fast to the fence?

Ans. 24. No, sir; it was loose and over a foot wide.

Int. 25. Mr. Ray, have you talked to any one about this transaction before to day—by Mr. Sterritt or any other person for him?

Ans. 25. Yes, sir.

Int. 26. How many times, do you think?

Ans. 26. Once.

Int. 27. Who was it saw you?

Ans. 27. Esq. Garver.

THOMAS RAY.

Int. 1. State your name, age, residence, and occupation.

Ans. 1. My name is Christian H. Garver; my age is 63; I reside in Macon county, Illinois, and am a farmer.

Int. 2. State what relation, if any, you sustain to this suit.

Ans. 2. No relation to it whatever.

172 Int. 3. State whether you are acquainted with either party to the suit, and if so, how long you have known them respectively.

Ans. 3. I have no acquaintance with none of them.

Int. 4. What official position, if any, do you hold in Macon county and how long have you held —?

Ans. 4. I have been justice of the peace for about 2 years.

Int. 5. You may look at the deed now shown you and state whether or not you ever saw the instrument before.

Ans. 5. (Same deed here shown to witness which was exhibited to witness Thomas Ray.) Yes, sir; I made the instrument.

Int. 6. Did you take the acknowledgment of it as justice of the peace—is that your acknowledgment?

Ans. 6. I did; it was my acknowledgment.

Int. 7. In whose handwriting is the body of the instrument?

Ans. 7. I think that's my handwrite-.

Int. 8. Do you remember who the parties were that was present at the time the deed was executed?

Ans. 8. I could not say positively that I do.

173 Int. 9. Give the best impression of your recollection as to how many and who brought the parties, and if there was anything peculiar about them, either of the parties; state your best recollection.

Ans. 9. My recollection is very faint in the matter as to how many was here, and the only peculiar thing about it, if I can recollect anything, was about the one-armed man being here with Mr. Cory. It seems to me I have a better recollection of Mr. and Mrs. Bowers being here than any of the others.

Int. 10. Did Mr. Ray ever bring any parties to you to receive or execute a deed more than the once, that you recollect of?

Ans. 10. Not that I recollect of.

Int. 11. Do you remember, if so state, about the payment of any

money by any one to Mr. Bowers at the time you took the acknowledgement?

Ans. 11. Well, sir, to positively say that I recollected it I could not; but it seems to me that there was money paid over; but it seems to me like a dream, it is too long a time for me to remember.

Int. 12. What is your best recollection or impression as to who it was paid by, whether by a one-armed or a two-armed man,
174 and by way of refreshing your recollection I will get you to look at the signature of the witness to the deed?

Ans. 12. Well, if I have any recollection it would be the one-armed man, but that I distinctly recollect it I could not say.

Int. 13. Have you been in the habit of drafting a good many deeds and mortgages?

Ans. 13. Yes, sir; I have for a county justice.

Complainant says he does not wish to cross-examine.

C. H. GARVER.

At the time of taking the foregoing depositions it was agreed by both complainant and defendant that any and all objections that might or could be made to any and all of the questions either in direct or cross-examination, save and except as to the form of the question, should be taken and considered as having been made at the time questions and answers were written down.

175 *Bill for Relief, etc.*

In the United States Circuit Court for the Southern District of Illinois. June Term, 1885. In Chancery.

JONATHAN CORY *vs.* MARGARET RUCKMAN.

To Jonathan Cory, the complainant in the above-entitled cause, and to Palmers, Robinson & Shutt, solicitors for said complainant:

You are hereby notified that on Monday, the 29th day of June, A. D. 1885, between the hours of nine (9) o'clock in the forenoon and six (6) o'clock in the afternoon of said day, and to continue from day to day, if necessary, at the residence of Thomas Ray, near Forsythe, Macon county, Illinois, and before John A. Brown, the master in chancery in and for said Macon county, who, by order of said court, is authorized and appointed to take depositions in the above-entitled cause or before some other officer authorized by law to
176 take depositions, I shall proceed to take the depositions of Thomas Ray, Mrs. Thomas Ray, his wife, and C. H. Garver to be read in evidence in the above-entitled cause, which is now pending and undetermined in the circuit court of the United States for the southern district of Illinois, said witnesses being residents of said Macon county. Said depositions will be taken on the part and in behalf of the defendant in said cause when and where you can appear and cross-examine, if you see fit.

Dated this 16 day of June, 1885.

E. A. WALLACE,
Solicitor for Defendant.

177 STATE OF ILLINOIS, } ss:
Macon County, }

I, John A. Brown, a master in chancery within and for the said county and State, do hereby certify that in pursuance of the annexed reference, I caused the said Thomas Ray and C. H. Garver, the witnesses named in the said above deposition and whose names are subscribed to the foregoing deposition, to appear before me, on the 29th day of June, 1885, as in said reference specified; that previous to the commencement of the examination of said Thomas Ray and C. H. Garver they were sworn according to law to testify the truth, the whole truth, and nothing but the truth relative to the matters in controversy in said cause now pending and undetermined in the United States circuit court for the southern district of Illinois between Jonathan Cory, plaintiff, and Margaret Ruckman is defendant, so far as they should be interrogated concerning the same; that said deposition was taken at the respective resi-
178 dences of said witnesses, in the said Macon county, Ill., on the 29th day of June, 1885, between the hours of 9 o'clock a. m. and 11 o'clock p. m. of said day, and was reduced to writing by me, who am neither of the parties in said suit nor the attorney of either nor interested in the event of the same; that after said deposition was taken by me as aforesaid the interrogatories and the answers thereto of each witness as written down were read over to the said witnesses; and that thereupon the same were signed and sworn to by the said witnesses before me at the place and on the day and year aforesaid, and that E. A. Wallace for defendant was present, and the plaintiff was present in person and asked the cross-questions.

In witness whereof I have hereunto affixed my hand and seal this 29th day of June, 1885.

JOHN A. BROWN,
Master in Chancery for Macon County, Illinois.

179 And afterwards, to wit, on Tuesday the first day of November, at the June term of said court, A. D. 1887, the following further proceedings were had in said cause, and entered of record, to wit:

Final Decree.

JONATHAN CORY, }
vs. } In Chancery.
MARGARET RUCKMAN. }

And now come the parties, the complainant, by his solicitors, Messrs. Palmers & Shutt, and the defendant, by her solicitors, Wallace & Prettyman, and this cause coming on to be heard on bill, answer, replication, and the evidence, and the court having heard the evidence and the argument of counsel, as well for plaintiff as for defendant, and having duly considered the same and being sufficiently advised of and concerning the premises, doth find the mate-

rial allegation in complainant's bill as to the purchase of the land therein described to be true, and that the deed to said land by Bowers to Elisha Ruckman was intended and was held by said Ruckman as a mortgage in equity to said Elisha Ruckman, and that the debt intended to be secured by said mortgage had been fully paid by said complainant to said Ruckman before the filing of said bill herein, and the court doth therefore order, adjudge, and decree that the said defendant, Margaret Ruckman, within twenty days from this date, execute, and deliver to the complainant a deed conveying to him said land, to wit, the southeast quarter of section number one (1), in township twenty-one (21) north, of range number five (5) west, of the third principal meridian, in Mason county, Illinois, and that in default of such execution of said conveyance by said defendant that the master in chancery of this court execute and deliver to complainant a deed to said land, and report his action to the court for approval, and that complainant recover costs of this suit against defendant and have execution therefor.

180 And afterwards, to wit, on Monday, the 7th day of November, at the term and year last aforesaid, the following further proceedings were had in said cause in said court, and entered of record, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } T. No. 112. 6676. In Chancery.

This day comes the defendant, by Messrs. Wallace & Prettyman, her solicitors, and enters her motion for a rehearing of this cause.

And afterwards, to wit, Saturday, the 3rd day of March, at the January term of said court, A. D. 1888, the following further proceedings were had in said cause in said court, and entered of record, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } T. No. 105. 6676. In Chancery.

This day this cause came on to be heard upon motion heretofore entered by defendant for a rehearing, and the court having heard argument of counsel overrules said motion.

181 And afterwards, to wit, on Thursday, the 5th day of April, at the term and year last aforesaid the following further proceedings were had in said court in said cause, and entered of record, to wit:

JONATHAN CORY
vs.
MARGARET RUCKMAN. } In Chancery.

On motion of defendant, by her solicitors, an appeal to the Supreme Court of the United States is allowed on her entering into

bond to the complainant in the penalty of one thousand dollars ($1,000) in sixty days from this date, and conditioned as the law directs.

182 *Appeal Bond.*

And afterwards, to wit, on the 25th day of April, A. D. 1888, came the defendant, Margaret Ruckman, and filed in the office of the clerk of said court, an appeal bond for the removal of said cause from the circuit court of the United States for the southern district of Illinois, to the Supreme Court of the United States, which said appeal bond is in the words and figures, to wit:

Know all men by these presents that we, Margaret Ruckman of the State of New York, as principal, and Enos S. Starrett, as surety, of the county of Mason and State of Illinois, are held and firmly bound unto Jonathan Cory in the penal sum of one thousand dollars for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at Springfield, Illinois, this eighteenth day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

The conditions of the above obligation *is* such that whereas the said Jonathan Cory did on the first day of November, A. D. 1887, at a term of United States circuit court for the southern district of Illinois, then being holden within and for the southern district aforesaid, in the county of Sangamon and State of Illinois, obtained a decree and judgment against the above bounden Margaret Ruckman for the conveyance of the land and a perpetual injunction as in said cause is prayed, and costs of suit, from which decree and judgment the said Margaret Ruckman has prayed for and obtained an appeal to the Supreme Court of the United States.

183 Now if the said Margaret Ruckman shall duly prosecute said appeal, and shall moreover pay the amount of the said judgment, costs, interest, and damages, rendered and to be rendered against her, the said Margaret Ruckman, in case the said decree and judgment shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue.

MARGARET RUCKMAN, [SEAL.]
ENOS S. STARRETT, [SEAL.]

Approved April 25, 1888.
JAMES T. JONES, *Clerk.*

(Endorsed:) Filed this 25th day of April, 1888. James T. Jones, clerk.

184 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that

the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein Jonathan Cory is complainant and Margaret Ruckman is defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the one hundred and thirteenth year.

{ The Seal of the Circuit Court of the United States for the South'n Dist., Ill. }

JAMES T. JONES, *Clerk.*

185 *In Chancery, for Conveyance. Appeal from Circuit Court, S. Dist., Ills.*

In the Supreme Court of the United States. October Term, 1888.

MARGARET RUCKMAN, Appellant,

vs.

JONATHAN CORY, Appellee.

This decree was obtained by Jonathan Cory *vs.* Margaret Ruckman in U. S. c't court for S. dist. of Ills, June term, 1887.

And now comes the said Margaret Ruckman, appellant in said cause, by Henry W. Wells, her solicitor, and says that in the record and proceedings and in the rendering of the decree aforesaid there is manifest error in this, viz:

1st. The court erred in not sustaining the demurrer and in not dismissing the bill for want of equity.

2nd. The court below admitted improper evidence on the part of the complainant against deft's objections.

3rd. The court erred in finding the deed in question to be a mortgage to secure a debt due to Elisha Ruckman; that such mortgage was satisfied by payment of the debt to Ruckman, he being dead when the bill was filed, and his representatives, not parties to the suit, requiring appellant to convey the land in question to the appellee.

4th. The court erred in not requiring complainant to make the representations of Elisha Ruckman, deceased, parties to the bill.

5th. The court erred in rendering the decree upon
186 the evidence in favor of the complainant and against the defendant for costs.

6th. The court erred in not granting appellant's motion for rehearing.

By reason whereof the appellant prays that said judgment and decree of the said circuit court may be wholly reversed and said bill be dismissed.

MARGARET RUCKMAN,
By HENRY W. WELLS, *Her Solicitor.*
WALLACE AND PRETTYMAN,
Of Counsel.

187 *Bill in Chancery for Conveyance and Relief. B. S. Prettyman.*

MARGARET RUCKMAN, Appellant, *vs.* JONATHAN CORY, Appellee.

United States Supreme Court.

On appeal from the Circuit Court of the Southern District of the State of Illinois.

Appeal from the U. S. Circuit Court

Benjamin S. Prettyman, a citizen of the State of Illinois, and having been of counsel in the above-entitled cause for appellant, being first duly sworn according to law, deposeth and sayeth, that he is personally acquainted with the lands and premises in controversy in the above-entitled cause and knows the present and past cash value thereof, and he avers that before and when the bill in the foregoing case was filed and said suit was begun the cash worth or value of the said land in controversy therein was $8,000 *dollars;* that the same was then well worth in cash the sum of $8,000 *dollars,* and that the same is now well worth said sum of $8,000 *dollars,* and further affiant sayeth not.

B. S. PRETTYMAN.

Subscribed and sworn to before me September 20, 1888, by B. S. Prettyman.

JAMES T. JONES, *Clerk.*

Endorsed on cover: S. Illinois C. C. U. S. No. 1199. Margaret Ruckman, appellant, *vs.* Jonathan Cory. Filed October 5, 1888.

Stamped on cover: Supreme Court U. S. Received September 25, 1888. Clerk's office.

No...... *Agenda No.*.....

IN THE

Supreme Court

OF THE

United States.

October Term, A. D. 1888.

MARGARET RUCKMAN, APPELLANT,

vs.

JONATHAN CORY, APPELLEE.

In Chancery for Conveyance.

Appeal from Circuit Court, S. District of Illinois.

BRIEF AND ARGUMENT OF APPELLANT.

Filed .....*188*....

.....*Clerk.*

HENRY W. WELLS,
Solicitor for Appellant.

WALLACE & PRETTYMAN of Counsel.

Times Publishing Company, Pekin.

In the Supreme Court

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1888.

MARGARET RUCKMAN, APPELLANT,

vs.

JONATHAN CORY, APPELLEE.

IN CHANCERY FOR CONVEYANCE.

Appeal from Circuit Court, S. Dis't of Illinois.

BRIEF AND ARGUMENT OF APPELLANT.

Statement of the case:

Appellant, a resident of the state of New York, on the 24th day of May, 1880, brought ejectment against

appellee to recover possession of the S. E. quarter of section 1, T. 21, N., R. 5, W. 3d P. M., in Mason county, Illinois, claiming title thereto in fee, and on a trial thereof before said court, at the June term thereof, 1883, recovered a judgment for its possession in fee, whereupon appellee, under the statute of Illinois, chap. 45, sec. 35, took a new trial in the ejectment suit. And pending which, filed his bill in equity, admitting the legal title to be in appellant, avering his inability to successfully defend at law against it, asking the restraint of the ejectment, by intervention in equity, avering his original purchase of the fee from Willis D. Bowers, in 1856, and payment therefor, in 1858, with his own money. That he had borrowed of Elisha Ruckman $1,000 of the $1,240 that he paid for the land. That without consultation or agreement with Ruckman, he had the deed from Bowers of the land made to Ruckman, designing it to be a deed only to Ruckman to secure the $1,000 so borrowed of him. That he gave Ruckman no note for the money, and there was no time in which it was to be repaid to Ruckman nor specific rate of interest agreed on. That Ruckman had no knowledge that the deed was made to him when done, and no agreement for it to be made to him as a deed or otherwise to secure the $1,000 loaned. That the the deed was but a security, and that by legal services he rendered to Ruckman in the (Alwood) suit in Illinois, he fully paid to Ruckman all of the $1,000 debt long before the commencement of the ejectment suit, and that Ruckman was his cousin, and had often promised him to convey the land to him or have it

done, but did not. That he actually occupied the land before borrowing the money of Ruckman- and had done so ever since, and still does, and had made improvements upon it, and paid all the taxes on it, but that Elisha Ruckman had, without consideration, on April, 1862, conveyed it to the defendant, then Margaret Hopping, and afterwards, in January, '64, married her, and when she began her suit in ejectment, lived separate from her, and that she refused to convey the land to Cory, and was inequitably prosecuting the suit in ejectment for possession of it against him, and that Elisha Ruckman was dead, and praying that she be required to convey it to him in fee. Margaret Ruckman, defendant, answering, admitting the deed was made to Elisha Ruckman, and from him to her, of the land; that she was, at the date of the deed to her, unmarried; that she was, in January, 1864, married to Elisha Ruckman, and lived separate from him when she brought her suit; that Cory had paid most of the taxes and had actually occupied the land at all times from the date of the deed to Elisha Ruckman. Avering that he occupied it as the tenant of Elisha Ruckman while he owned it, and was to improve, repair and pay taxes on the land for its use, and so continued to use it and pay taxes on it for her for its use until 1880, when she notified him she wanted the possession of it, and he then first claimed to own it and she brought her suit in ejectment; denies that the deed to Ruckman was a security, or that to her was without consideration; that Cory paid his or any money for the land, and denies every other material charge and allegation in the bill, setting up and

insisting on complainant's laches, and the statute of limitation as an estoppal and bar to his action, and setting up and insisting upon the statute of frauds, as against the alleged parol implied intent of Cory, to regard the deed as a mortgage of the land, and praying and insisting upon the same advantage under her answer as if it were a demurrer to the complainant's bill.

No replication was filed to the answer, but evidence was taken by complainant and by defendant in the case, subject to objections to it for incompetency, which at the time was interposed, respectively, by each party, to all parts of the evidence offered by the other. The cause was heard by the court and a decree rendered sustaining the bill, finding all the material facts alleged therein for complainant, and requiring defendant to convey the land to complainant, from which decree defendant appeals.

Assigning for error:

1st. The court erred in not sustaining the demurrer and in not dismissing the bill.

2nd. In admitting incompetent evidence for complainant.

3rd. In finding the deed to be a mortgage to secure a debt, that the debt was paid, in the absence of the payee, or his representatives, and in requiring a deed from appellant.

4th. In not requiring the representatives of Elisha Ruckman to be made parties to the bill.

5th. In rendering a decree vs. appellant for costs.

6th. In not granting appellant a rehearing, and praying a total reversal of the decree, &c.

I.

That the court erred in not sustaining the demurrer and dismissing the bill. If the deed to Ruckman was but to secure a debt, Cory had an adequate remedy at law.

And the administrators or heirs of Elisha Ruckman were necessary parties to the bill in equity. In Illinois, the debt is the principal thing, and the mortgage to secure it is but an incident. If the debt is paid the mortgage is gone. The owner of the debt thereby owns and controls the mortgage security. The assignment of the note, or debt secured, car[illegible]th it the mortgage given to secure it. The holder, [illegible]er of the debt, is the equitable owner of the mortga[illegible] real party in interest. In making proof of the pay[illegible] and taking the account of the debt or payment of it [illegible]he creditor, he or his legal representative is a necessary party to a suit to account, to cancel, satisfy or foreclose such mortgage.

Until entry by a mortgagee, it is personal estate and passes as personal property upon the death of the mortgagee, who is owner of the debt.

Jones on Mortgages, § 1101, 1103, 1427, 1559.

Lucas vs. Harris, 20 Ills., 169.

Benton vs. Baxter, 7 Blackf., 297.

Holding vs. Sweet, 23 Indiana, 118.

Bell vs. Schrock, 2 B. Monroe, 29.

Leonard vs. Morris, 9 Paige, 91.

Stone vs. Lock, 46 Maine, 445.

Burns vs. Thayer, 115 Mass., 89.

1 Jones on Mortgages, 341.

Hoffman vs. Alexander, 70 Ills., 117, 118.

The bill alleges the deed to Ruckman was intended to secure a loan of money, and that the loan and debt is paid. No discovery is asked for in the bill, and proof in equity is equally competent at law. If the debt is paid the mortgage is destroyed. This may be proved by a defendant in a suit in ejectment.

Mowry vs. Cummings, 34 Fed. Rept., 713.

Mester vs. Houser, 94 Ills., 433, 438.

Packwood vs. Gridley, 39 Ills., 390.

Suits in equity shall not be sustained, in either of the courts of the United States, in any case, when a plain, adequate and complete remedy may be had at law.

Rev. Statutes of U. S., § 723.

The bill alleges complainant's possession and payment of all taxes by him from 1856 to 1883, and that the debt secured by mortgage was an account, not in writing, for money loaned. The Statute of Limitations, of Illinois, ch. 83, sec. 1, provides, "That no person shall commence an action for the recovery of lands, nor make any entry thereon, unless within twenty years after the right to bring such action first accrued, or within twenty years after he, or those from, by or under whom he claims, have been seized or possessed of the premises." The deed was made to Elisha Ruckman, 1st of October, 1858. Appellant claims through Elisha Ruckman.

The same statute of Illinois further provides, ch. 83, sec. 9, "That no person shall commence an action or make a sale to foreclose any mortgage, or deed of trust, in the nature of a mortgage, unless within ten years after the right of action, or right to make such sale accrues." The right of action accrued to Elisha Ruckman to sue for or foreclose for the alleged debt of $1,000, if it ever existed as a debt, or was secured by the deed as a mortgage, on the 2d of October, 1858. The bill avers that no time of payment was fixed upon, and no rate of interest stipulated for. A ~~deed~~ suit on an implied or unwritten contract, is limited to 5 years, by the same statute of Ills., ch. 83, § 12, suits upon "unwritten contracts" * * * "shall be commenced within five years next after the cause of action accrued." The bill on its face shows that the complainant was guilty of great laches. That the statute of limitation had run against this debt, more than 20 years before

he filed his bill in this case, and a mortgage can't be foreclosed when the debt is barred by statute.

Emory vs. Keighan, 88 Ills., 482.

This bill is in the nature of a bill to redeem from a mortgage, or for specific performance, and the right to redeem and the right to foreclose are reciprocal to the parties, and commensurable, redemption under the mortgage is cut off at the expiration of the same time, that the right of foreclosure is barred.

2 Jones on Mortgages, § 1146.

The bill shows complainant was guilty of great laches. An owner of equitable rights and equitable titles must be vigilant, and eager in pursuing and enforcing them in equity; must show that he was always ready, willing and eager to perform on his part, even when time is not the essence of the contract. A complainant must not sleep upon his rights. Specific performance is not decreed after great laches.

McLaurie vs. Barnes, 72 Ills., 73.

McCabe vs Cosier, 69 Ills., 502.

Alexander vs. Hoffman, 70 Ills., 115.

Pratt vs. Stone, 80 Ills., 441.

Railsback vs. Williamson, 88 Ills., 495.

A right to compel specific preformance against one,

once lost by laches, can't be asserted in equity against another, who may have purchased the premises with notice of such right, after 8 years neglect, it is inexcusable laches.

Sugden on Vendors, 444.

Thompson vs. Bruen, 46 Ill., 125.

A bill not filed until 10 years after an agreement and not until after the death of the other party to the contract, cannot be sustained.

Marshall vs. Peck, 91 Ills., 187.

After 2 years a parol agreement is barred, in California.

Fowler vs. Southerland, 9 Pacific Rept., 674.

Five year laches, unsatisfactorily explained, precludes relief.

Fitch vs. Willard, 73 Ills., 92.

After 20 years a grantee's title is unassailable by one claiming an interest in the premises against a clear equitable title of record.

Johnson vs. Filson, 118 Ill., 223.

McCartin vs. Adams, of Traphagen, 11 Atl. Rept., 157–164.

Courts of equity refuse their aid to state claims when

parties have slept on their rights, or acquiesced for a great length of time. This bill shows great laches, with full knowledge; a stale demand, with long acquiescence in the legal title, long known to have been conveyed to a stranger with covenants of warranty for a valuable consideration alleged, and recorded. A right slept on, if it existed for 20 years and until after the death of the party against whom the right is alleged, and when his testimony can no longer be had on the question, is wrongful to his assignee, who, if informed promptly of such claim, could have made the proof or presented the evidence of title, which complainants delayed until the death of Ruckman rendered it impossible to obtain, and the complainant seeks now by his own testimony to make his own case, which could not be done by him in the lifetime of Ruckman, and against his testimony in the case. To receive Cory's testimony is contrary to the spirit of the statute and of equity.

Smith vs. Burnet, 35 N. J. Eq., 319.

Tishume vs. Oldis, 14 Atl. Rept., 640.

It exhibits gross laches in the complaint, and he is barred in equity on the face of his bill and estopped to prosecute this suit. And the court erred in not sustaining the demurer, and in not dismissing the bill. And appellant's 1st error assigned is well taken.

II.

2nd. The court below admitted improper evidence on the part of the complainant against defendant's objection.

The deed from Bowers to Elisha Ruckman was executed October 1st, 1858, and the deed from Elisha Ruckman to appellant was executed April 24th, 1862. Record, 108, 112.

The court erred in permitting complainant's depositions, taken in the case, to be read in evidence, against defendant's objection for incompetency, to show statements made by Elisha Ruckman, tending to affect the ownership of appellant of the premises he had conveyed to her, after the date of his conveyance to her, and in her absence. This evidence complained of that of Nathan Nieukirk, Record, 22, who says in 1866, of Elisha Ruckman, and of his speaking of these premises, and the ownership thereof, in appellant's absence: "He spoke of Mr. Cory's farm as being a good farm." * * * "He spoke in this wise: Mr. Cory owned a good farm," and on record 23, said: "Mr. Cory had a good farm where he was."

And of Jonathan C. Drake, Record, 26, who says, in testifying of Elisha Ruckman and of his statements about the premises made in 1866: "Mr. Ruckman and myself went out to the stable, which was built on the line between Cory's land and my own, Mr. Ruckman stepped up to the line fence and viewed this farm of Mr. Cory's and said that Jot. (meaning Cory) had a beautiful farm." "He made the remark that he needed to improve some." "He needed the barn and needed the house repaired up." Record, 29. To the interrogatory, "Was she (Mrs. Ruckman) present at this conversation between you and Mr. Ruckman?" Ans., "No, sir."

And W. H. Dougherty, Record, 33, 34, who says in testifying of what Elisha Ruckman said in 1866, in the absence of appellant: "He had been assisting his friend Cory in the difficulty he had had in that land (meaning the premises in question). "I got the inference from him that the land belonged to Cory."

And Jonathan Cory, complainant, Record, 70, 71, who says, in testifying of what Elisha Ruckman said to him in 1864, in the absence of appellant, to the question, "Were not these lands spoken of by Ruckman in your ~~house~~ Presence?" said, "They were." * * * "Ruckman proposed to me to trade other lands for these lands, in case the Alwoods would consent to go on these lands, and we made an arrangement that if the compromise was made, and the Alwoods were willing to go on these lands and make a final settlement, I consented that he could make the arrangement for these lands and give him others for them." Record, 73, of the same conversation in 1864, testified to interrogatory, "Why did you not obtain a deed from Ruckman and his wife of these lands?" said, "Ruckman had deeded this land to his wife before she was his wife. He said the laws were so in New Jersey and New York he couldn't make a second deed, but that he would get her to make the conveyance." * * * "I never talked to her on the subject. * * * "I don't know that I knew (that she had a deed for the land) it before 1864." Record, 74. He said, "I told Ruckman that if I didn't get title, I would get one through the court. He didn't want me to do this, always said he would give me

title. My family objected to my bringing suit against him. He didn't want suit brought. We always had been intimate, and he said the title should be arranged." * * * "He made it (this statement) at different times from 1864 to 1870, probably later."

Record, 58, to the question as to his conversation with Ruckman in reference to the conveyance of the land to Margaret Hopping (appellant) he said: "I think the first conversation I ever had with Ruckman was when he and his wife came west; I think it was in 1866; it was at my place in Mason county; I think I got an inkling that it was conveyed to his wife, Margaret Hopping. He said he did not intend to convey it to her; his intention was to convey his own lands, and he gave me his reasons for conveying them. In taking the first deposition, they claimed their witness fees, and there was a fee bill issued. This was in the case of Ruckman against Alwood, and forty acres of his land was sold for that fee bill. I think it took $160 to redeem. He said he conveyed his lands to Margaret so they should not be sold again for fee bill, or any other cause. He said that was why he conveyed them."

All of this evidence is clearly incompetent and was erroneously received, because the declarations of a vendor in reference to the title or ownership of the property, made after the date of his conveyance in question, are not admissible to defeat the title of his vendee, unless the vendee is present at the time such declarations are made, and either expressly or tacitly assents to their truth.

Rust vs. Mansfield, 25 Ills., 338.

Steinbach vs. Stewart, 11 Wal. 567.

Rondyger vs. Ehrhardt, 51 Ills., 103.

Dodge vs. F. S. T. Co., 3 Otto, 379.

Demavoy vs. S. D., 23.—40 Ills., 247.

Meyers vs. Kinsey, 26 Ills., 37.

Higgins vs. White, 118 Ills., 619.

Brown vs. Collman, 105 Ills., 88.

Durand vs. Wightman, 108 Ills., 489.

Plain vs. Roth, 107 Ills., 595.

And the testimony of T. S. Mather, Record, 31, saying, "I received a letter from Mr. Ruckman, telling me to furnish Cory with some money, and telling me to draw on him, Ruckman, for it, I wrote Mr. Cory what Ruckman had said," is also incompetent evidence. It is not the best evidence. He does not say where he usually kept his letters received, or where he put or kept this one, and he searched for it no place but in his office; he did not see or enquire of his clerk, in whose custody he left his office, and there is no attempt to find or produce his letter to Cory, of which he testified the substance of its contents. No evidence that there is not in the possession of the parties a copy of the letters, and there is no proof that the

letter from Ruckman, testified about, was genuine; no evidence that the witness ever saw him write, knew his hand writing, or ever received any other letter from Ruckman, before or afterwards.

1 Greenleaf Ev., § 557, 558.

Hazen & Lundy vs. Pearson, 83 Ills., 241.

Cornett vs. Williams, 20 Wall, 226.

And the testimony of Jonathan Cory, Record, 53, detailing what Watts and Underwood and Ruckman and others, who are not parties to this suit, said and did in the absence of appellant, is incompetent. Among these, are, in 1857, Ruckman "told me if I wanted money he would let me have what I wanted. I asked him about interest. He said it wouldn't be more than six per cent. if he charged me that." Record, 54. "He told me not to let the thing run." * * * (In July, 1858,) "I wrote him the crop was a failure. He answered immediately, saying he had authorized Thos. H. Mather, of Springfield, to furnish what money I wanted to pay for the land." * * "I received a letter from Mr. Mather. He wrote to me that Ruckman had authorized him to (let) me have what money I wanted." Record, 55. * * * "He (Ruckman) checked up $1,000 in gold." * * * "I spoke to Ruckman in New York about securing him that $1,000, whether he would take a mortgage or note. He said no, he did not care about either." * * * "I just concluded I would take the deed in his name." Record,

56. "I made the deed, Ruckman knew nothing about it, it was made simply to secure the $1,000, and not in pursuance with any arrangement with Ruckman; he did not request it to be done; he did not ask it to be done."

No reason is given for not producing these letters from Ruckman and from Mather, and the statement of their contents by the witness, is certainly not the best evidence. And the proof of what is said by a grantor, deceased, not then possessed or entitled to the land involved in the suit, in the absence of the grantee, party to the suit, against which it is offered in evidence to affect her title, is not competent at common law, and its reception is contrary to the spirit, if not the letter, of the statute. Rev. Statutes Ills., ch. 51, sec. 2, provides, "No party to any civil action, suit or proceeding, or person directly interested in the event thereof, shall be allowed to testify therein of his own motion, or in his own behalf, by virtue of the foregoing section (sec. 1 of the act, providing persons interested might testify), "When any adverse party sues or defends, as" * * * "the executor, administrator, heir, legatee or devisee of of any deceased person * *" The Statute of the U. S., §858, provides, "That in actions by or against executors, administrators or guardians in which judgment may be rendered for or against them neither party shall be allowed to testify against the other, as to any transaction with or statement by the testator or intestate * * * " We have already seen, above, that the administrator or representative of Elisha Ruckman was a necessary party to this suit, he having

been, at his death, the owner of the debt alleged to be secured by the mortgage, to whom all alleged payments thereon were made, and with whom alone the account thereof could be adjusted, and all necessary parties in chancery must be made parties, and if omitted, the interest and rights of the parties to the suit are to be heard and held and enforced in every respect (if at all) as though all such necessary parties were made parties to such suit, and a plaintiff in a suit cannot, by omitting to make a necessary party a party to a suit, thereby enable himself to testify, or to call another party to testify as to statements of the deceased, in his own behalf, to sustain his claim, while the opposite party, by the death of the grantor, is deprived of his rebutting testimony.

Wagenseller vs. Prettyman, 12 Bradwell, 316.

Alexander vs. Hoffman, 70 Ills., 117, 118.

Richardson vs. Hodsell, 106 Ills., 479.

In principle, a grantee, or assignee, is like a devisee, or legatee of a deceased person, whose title is attacked through a contract of a deceased person on parol testimony, to be given by a party to a suit, and the principle on which this statute rests, clearly contemplates that a party to a suit, when he offers himself to prove a statement or a contract against a deceased devisor or grantor, accruing in his lifetime, to destroy the title to land or estate devised from or through the deceased in the hands of such grantee, defendant to the suit, and the administrator or

representative of such deceased party is a necessary party thereto, on full accounting and complete equitable determination of such cause as to all parties in interest, and such representative of the estate of the deceased, is negligently or fraudulently omitted as a party. The complainant so omitting him is disqualified to testify in such cause. It is the design of the law, that parties testifying against each other shall occupy equal grounds, and both be present in the flesh or have power to be present, and that one attacking a title derived from a deceased person shall not prevail by testifying to things such deceased person said.

Alexander vs. Hoffman, 70 Ills., 117, 118.

Boynton vs. Pelps, 52 Ills., 219.

Whitman vs. Rocker, 71 Ills., 412.

Reader vs. Inman, 6 Bradwl., 58.

Harris vs. Bank of J., 1 Southern Rept., 140, 143.

Wager vs. Robson, 4 S. E. Rept., 842.

Williams vs. Edwards, 7 S. W. Repts., 429.

Buffum vs. Porter, 12 Western Rept., 896.

III.

3d and 5th. The court erred in finding the deed in question to be a mortgage to secure a debt, payable to Elisha Ruckman; that the mortgage was satisfied by a payment to him, he being dead when the bill was filed

and his representative not made party to the suit, and in requiring appellant to convey the land to appellee and in rendering a judgment vs. appellant for costs.

The decree, record 179. is, "That the deed to said land by Bowers to Elisha Ruckman was intended, and was held by said Ruckman, as a mortgage." * * * "That the debt intended to be secured by said mortgage had been fully paid by complainant to said Ruckman before filing said bill herein. * * * "And that the said defendant, Margaret Ruckman, within twenty days from this date, execute and deliver to complainant a deed conveying to him said land" (in question) and in default, "that the master in chancery convey" it etc. "And that complainant recover costs of this suit against defendant and have execution therefor."

The finding that the deed to Elisha Ruckman was a mortgage is based almost wholly on the testimony of Cory above complained of is incompetent testimony, and without it there is no reasonable evidence on which such finding could be based, for Cory alone, of all the witnesses, says the deed to Ruckman was a mortgage to secure a debt to Ruckman, though he says that it was a mortgage by his wish and intention only, and that Ruckman had no knowledge of it when it was done. Had no note given for the money, and no evidence of the debt secured existed in the hands of Ruckman. No time was ever fixed for the payment of the debt and no agreement was made what interest, if any, should be paid on it, if it

were to be paid. All of these are usual, and some of them indispensible elements of a mortgage, and a debt for money loaned and secured by mortgage, and the evidence of them cannot safely be left wholly with a mortgagor. The fact that they are so left is evidence that there was no mortgage intended, and this is strengthened by the fact that while Ruckman lived, and from 1858 to 1883 there never was a mortgage mentioned to Ruckman or to anybody else in connection with the land transaction, or any debt spoken of to be secured by it, and no mention of even Cory's wish or intention that the deed from Bowers to Ruckman should be a mortgage, for Ruckman's benefit, while the fact that Ruckman, by warrantee deed, conveyed the land to appellant in April, '62, of which Cory was, by the record of that deed in Mason county, notified on May 5th, 1862, and had actual notice, as he admits, in 1864, when he was present in New York with Ruckman, and though appellant was then there, and the wife of Ruckman, he never mentioned the fact to her, of the deed to Ruckman being intended by him as a mortgage, or of any wrongful, or improper, or fraudulent conveyance of the land by Ruckman to her in violation of his equitable right in the premises, although he testifies that Ruckman told him. He had then deeded it to appellant by mistake, and would have appellant convey it to him. Neither did he mention the fact of his right, or claim to the land as mortgagor, with the debt, in whole or in part paid.

And in 1866, when appellant and Ruckman were to

gether with Cory, on the premises, and stayed there for two or three days, and Ruckman then spoke of the land and farm in question in his hearing, as the farm and property of appellant, while Cory, Ruckman and appellant "walked out together to look over the land. Mr. Ruckman said to me, This is that farm of yours. Mr. Cory said yes, it is very valuable, for it is near a railroad station. Mr. Ruckman said, Mr. Cory will stay on it, pay the taxes and take care of it for the use of it. Mr. Cory said nothing, but bowed his assent." And this visit to and walk upon, and conversation thereon, between Cory and Ruckman and appellant, in relation to the land, and of Cory's right or privilege, or interest in it, and in the occupancy of it, is nowhere denied by Cory in his testimony as having occurred, when, and as testified to by appellant, and that it should have occurred on the premises, with him, or in his presence and hearing, and he have had the title and right to the land, as mortgagor, now claimed by him, is preposterous, and especially is this so when we consider that he then knew, *if true*, that he had then paid to Ruckman, in legal services in the Alwood case, the whole debt, secured to Ruckman, and was then, if ever, entitled to have the mortgage cancelled, or the land released or conveyed to him by Ruckman and appellant. He then knew that appellant was grantee of it, and claimed to be the owner, in his presence, and expected and relied upon the fact that he was then occupying the land, as her tenant, and had occupied as the tenant of Ruckman, before and when it was deeded to her, and by acquiescence and attornment, he was her tenant and to

keep up repairs and pay taxes on the land for the rent of it, or for the use, while he occupied it. These terms of renting it were not denied by him, or this tenancy protested against. A tenant cannot dispute the title of his landlord; a party cannot stand by and hear the title to his land spoken of as conveyed by a grantor in fee to a grantee, by warranty deed, for a valuable consideration, and himself then and there be spoken of as the tenant of such grantor, and then as the occupying tenant of such grantee, and there have the terms of such tenancy mentioned, and know such grantee so understood the tenancy, as the tenant's only right of occupancy of the premises, without being estopped at law and in equity thereby from claiming title in fee thereto against such grantee. "He who is silent when equity requires that he should speak, will not be heard in equity when equity requires that he should be silent." And this is especially so when over twenty years have passed and the fact of the existence of the debt, as well as the fact of a mortgage at all, rests alone on the testimony of such a debtor. But the fact of the tenancy of appellee can be no longer in doubt under the evidence, when we consider that after appellant had commenced her suit in ejectment against appellee, in support of her title to and right of possession of the premises, and to show that Cory occupied the land when it was deeded to her only as the tenant of Elisha Ruckman, she called Elisha Ruckman, then living, as a witness, who testified, Record, 103: "Mr. Cory was on this land before I got the title, and I allowed him to remain there, he paying the taxes; that was the only consideration." Hear-

ing this testimony by Ruckman, Cory did not deny it, or cross-examine Ruckman as to it, or intimate to him, or in his presence there, that he claimed any other title or right of possession or equity as a mortgagor, or otherwise, in the premises. Hearing this testimony in the suit in ejectment, and knowing the deed was a warranty deed in fee from Bowers to Ruckman, and of the like warranty deed from Ruckman to appellant, who was then prosecuting the suit in ejectment, for its possession, after the visit to and inspection of the farm, by Ruckman and appellant, and the conversation with Cory, who was then a lawyer, and claims to have before then paid by his a
Ruckman, to him, more than twice the m
On this state of fact, that he should have d
his bill to redeem, or for conveyance, or to compel satisfaction and release of the mortgage from any delicacy of feeling and relationship of parties, or wishes of family until after the death of Ruckman, is preposterous, and if true, it would be unaccountable and is improbable, such delay strongly supports the averment of the occupant tenancy by Cory, of the premises, and with equal force it rebuts the assumption of facts found by the court, that the deed to Ruckman was a mortgage to secure a debt to him, and that before filing the bill, that debt was paid by Cory.

Follingsbee vs. Kilbreth, 17 Ills., 528, 529.

Pratt vs. Stone, 80 Ills., 445.

Nor does the testimony of Prettyman, record 91, that the services and expenses of Mr. Cory in the Alwood case

from 1863 to 1873, was worth $1,000, if true, tend to show the Ruckman deed a mortgage, or the debt paid by legal services to Ruckman; and the fact that Ruckman was able to pay at all times; that he did pay sometimes; that Cory was always imprecuneous; that there was never any bill rendered by Cory, or any accounting between Cory and Ruckman for such services, from 1858, when Cory says it commenced, until Ruckman's death, in 1882; that Cory had no license to practice law in Illinois until 1861, and from April, 1862, he was more a farmer than a lawyer, and knew that Ruckman had deeded, or assigned, all of his legal interest in the land for a valuable consideration to appellant by a warantee deed, and thus conveyed the mortage in equity, if it existed, the title of which, Cory could not equitably afterwards destroy, by a payment of the debt, in service to Ruckman, with full knowledge of appellant's equitable and legal rights. And the mortgaged land so conveyed to appellant by Ruckman, and his relations then to Cory tend to prove that the deed to Ruckman was understood by him as a deed in fact, and not a mortgage, and raise the presumption that whatever services Cory rendered to Ruckman he was paid for by Ruckman from time to time, as such services were rendered, and that the mortgage theory and debt, in fact, arose after Ruckman's death. The debt of $1,000 and its payment by services in satisfaction of the mortgage, were all an afterthought, but a party who seeks to have an absolute deed declared a mortgage, and sets up his silent intention, or a verbal contract, to overcome and defeat the deed, must establish his case by

evidence which is clear and convincing.

Wilson vs. McDonald, 78 Ills., 514, 517.

Magnusson vs. Johnson, 73 Ills., 159.

Carr vs. Rising. 62 Ills., 14.

Taintor vs. Keys, 43 Ills., 333.

Ranstead vs. Otis, 52 Ills., 30.

Flagg vs. Mann. 14 Pick. (Mass.), 467.

Remington vs. Campbell, 60 Ills., 516.

Howland vs. Blake, 97 U. S., 626, 628.

Cadman vs. Peter, 118 U. S., 73.

Tilden vs Streeter, 45 Mich., 533, 540.

Pancake vs. Caufman, 7 Atl. Rept., 67, 69, 70.

Sloan vs. Becker, 22 N. W. Rept., 731.

Kent vs. Loshly, 24 Wis., 654.

Laning's Appeal, 4 Atl. Rept., 375–377.

Kendal vs. Allen, 11 Allen, 15–19.

Richardson vs. Johnson, 41 Wis., 102.

Ramage vs. Ramage, 2 Southeastern Rept., 835.

Patterson vs. Lamson, 10 Western Rept., 440.

The existence of the debt to Ruckman, secured by the mortgage, itself, depends upon the testimony of appellee, Ruckman never knew of it, never claimed to have it, never collected or tried to collect it, and there can be no mortgage without a debt, and the rights of the parties must be reciprocal.

1 Jones on Mort., §§ 16, 264, 269.

Rue vs. Dole, 107 Ills., 275.

Pitts vs. Cable, 44 Ills., 103, 106.

Stewart vs. Fellows, 17 N. E. Rept., 476.

No fraud is charged in the bill against Ruckman in making the deed of the land to appellee, and no mistake is proven and no fraud or mistake is charged against appellant in purchasing or accepting the deed, and no notice of Cory's right in the land, except what his possession gave, is alleged or proved, and that possession, if a tenant, was notice of his tenancy, and a tenant's possession is the possession of his landlord. Truth and fair dealing is to be presumed. Fraud, if it exists, must be alleged and proved. Can appellee attack, as a fraud on him, that which he does not allege to be a fraudulent act. If a grantee in an absolute deed, really a mortgage, sells it, he is liable to the *cestique trust* for the value of the land or its proceeds.

1 Jones on Mort, § 341.

Harris vs. McIntire, 118 Ills., 275.

Morritz vs. Florney, 2 N. E. Repts. 530 and note 535.

Possession of land as tenant of another, affords no notice that he claims title to the premises.

Bradley vs. Luce, 99 Ills., 234–244.

The evidence tends to show a resulting trust existed, if not an absolute deed, it is not a mortgage. A man cannot become a mortgagee without his consent. If Ruckman loaned $1,000 to Cory it was Cory's money, and if Cory paid his money for the land, and took the deed in the name of Ruckman, then Cory had a resulting trust in the land, against Ruckman, but that was not and would not be a mortgage.

And a bill to cancel a mortgage, or declare the debt secured by it, paid, and for a release or reconveyance of the land in question to him as a mortgagor, cannot be maintained by a parol showing of facts, that raise a resulting trust only in favor of a complainant against a defendant, setting up and insisting on the statute of frauds.

Reeves vs. Strawn, 14 Ills., 94.

Magusson vs. Johnson, 73 Ills., 160.

Helman vs. Messer, 16 Pacif. Rept., 766.

After the death of a party to the mortgage, and long lapse of time, with no evidence in writing of the debt, or of the mortgage, the proofs should be clear and conclusive, and can't rest on parol recollections, or alleged statements of the deceased mortgagee.

Mark vs. Pell, 1 J. Ch., 594.

Parol evidence cannot be received to establish a resulting trust in a stranger, after the death of the grantee in an absolute deed to real estate.

2 Sugden on Vendors, 156.

Roberts on Frauds, 99.

If Ruckman held as a trustee for Cory under a resulting trust, and conveyed the land to appellant without informing her of the fact, it was a fraud upon her as well as upon Cory, and Cory knew of it by the deed recorded in 1862, and by Ruckman's statement to him in 1864, and when he discovered the fraud practiced on him by Ruckman's conveyance, and did not repudiate it, and notify appellant at once of it, and neglected to proceed to enforce his right to the land for 20 years, he divested himself thereby of his equitable title, by his laches, and by acquiescing in the deed; and in 1864, when he consented that Ruckman might then sell and convey the land as his own in fee to Alwood, he *waived* his equitable right to the land, if any existed, by his agreement.

1 Jones on Mort., § 338.

Folingslee vs. Kilbreth, 17 Ills., 522.

Maxfield vs. Patcher, 29 Ills., 42.

Carpenter vs. Carpenter, 70 Ills., 457.

But the fact that Ruckman sent Drury from New

York with the money to pay for the land, that Drury did bring the money and tender it to Bowers, and count it out to him, and asked him for the deed, which Bowers then agreed to give him, and he paid the money to Bowers and then took the deed in his possession, which was made to Ruckman, and put it in his pocket for Ruckman, cannot be controverted, though Cory says he borrowed the money of Ruckman, except $40 of his own, and himself brought it from New York and paid it to Bowers for the land in question, and took the deed in Ruckman's name and immediately sent it, with $1 enclosed, to the recorder of Mason county, for Ruckman. Yet, Bowers says, Record, 41, the one-armed man, Drury, paid $1200 and over, in money, and all of the consideration for the deed in gold, to him, and Mrs. Bowers, Record, 130, says Drury paid the money for the land to her husband, and Mr. Ray, Record, 165, says the one-armed man (Drury) had the satchel with the money in it, and counted it out and paid it to Bowers, and took the deed when it was acknowledged, and wrapped it up, put it in his pocket, and that Cory had nothing to do with it, and did nothing. Ray states that Drury, "the one-armed man, counted out the money, $1,000, to Bowers, at his house, and asked Bowers if he would make him a warranty deed to the land (in question). Mr. Bowers said yes." All these are intelligent, competent and unimpeached witnesses. And what recollection Garver has of the transaction, tends to corroborate them, that Drury paid the money to Bowers for the land, while Drury's statements to his son, if competent evidence, leaves not a shadow of a doubt that Ruckman, by Drury, paid all the

money. But Drury, as well as Ruckman, is dead, and his testimony is not attainable in the case. Cory is expressly contradicted as to his bringing the money to Bowers, having the money, or paying the money for the deed, by Bowers, by Mrs. Bowers, by Ray, and by Garver, all disinterested persons who were present and saw the transaction, and Ray says it was Drury that first tendered the money at Bowers' house and asked for the deed, and to him Bowers consented to make it for the money, and that Drury took it when it was made and put it in his pocket, and the evidence shows that he professed to represent Ruckman to have carried out Ruckman's money and paid it for the land, and took the deed in Ruckman's name, for Ruckman, and the evidence shows that the deed was not recorded in October, 1858, in Mason county, as Cory testifies he sent it to be; and that it was not recorded until August, 1859. Cory testifies he wrote the deed to Ruckman; Garver denies this, and produces the deed in his own handwriting, and not Cory's. Thus Cory is contradicted in almost every material thing he testifies to, when other living persons were present to see and hear, and the rule is in equity, as at law, "*Falsum in uno, falsum in omnibus,*" and his testimony as to what Ruckman said and what Ruckman did, in his lifetime, now that Ruckman is dead, if competent, is entitled to little weight or consideration in arriving at the truth of the case, from the fact that it is a tissue of errors and improbabilities, met by contradictions from disinterested and unimpeached witnesses in the case, as well as rendered suspicious from his interest involved in the suit. But can a grantor's statements,

made after his title is granted, be heard to destroy such title?

The consideration of the deed to appellant, as fairly inferred, was in part made in contemplation of the marriage between the grantor and grantee. She was then his housekeeper, and had been for 17 years; had long nursed his invalid wife, who had some time before departed, and Ruckman recognizing his obligation to her for her services, rendered to him in his family, and to reward her faithfulness therein, he made her the deed, and soon after married her. She testifies, it was done "in recognition of those services." Record, 126.

IV.

The decree for costs against appellant is erroneous.

And while we concede that the question of costs is in the discretion of the court, in chancery cases, yet it seems to us that in this case, from the long delay, after full knowledge by Cory of all the facts, to bring his suit to redeem, or cancel the deed or mortgage, ~~and that~~ when he never once informed the appellant that he claimed or pretended to claim any interest in the land except as her tenant, and never demanded of her a deed or release cancelling such mortgage, if a mortgage, it is inequitable and at this late day to render a judgment against her for the costs of such a suit, when, had it been set up, and claimed to be a mortgage instead of a deed in Ruckman's lifetime, or that a resulting trust existed, such costs could and would have been avoided. is erroneous.

2 Jones on Mortgages, § 1111.

Forbes vs. Hall, 34 Ills., 159.
Fleming vs. Hall 47 Ills 282.
Harper vs. Ely, 70 Ills., 582.
Tuttle vs. Garrett 74 Ills 444.
Phillips vs. Hulsizer, 20 N. J. Eq., 309, 316.

And the court erred in not granting a rehearing to appellant in the case, upon the law and the evidence in the case, wherefore appellant insists that each and all of her errors herein are well assigned, and that the judgment and decree of the circuit court aforesaid should by this court be wholly reversed; wherefore, appellant prays, &c.

HENRY W. WELLS,
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PRETTYMAN & WALLACE,
Of Counsel.

Wm M. Springer
of Counsel

IN THE

SUPREME COURT,

OF THE UNITED STATES.

October Term, A. D. 1888.

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vs.

JONATHAN CORY,
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF ILLINOIS.

BRIEF OF COUNSEL FOR APPELLEE.

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BRIEF OF COUNSEL FOR APPELLEE.

The brief of counsel for appellant states the facts of this case with sufficient certainty. The controversy relates to the southeast qurter of Section one (1), Township twenty-one (21), North Range 5, West of the Third Principal Meridian, in Mason County, Illinois. The parties claim under one Willis D. Bowen, who in 1856, executed a deed to Elisha Ruckman, the grantor of the appellant.

The facts of the case are that the negotiation for the land was conducted by Cory, the appellee, who contracted for the purchase of the land with Bowen, and took a bond for a deed to himself. It appears that in 1856, at the time the money was to be paid, according to the conditions of the bond, Cory, who had borrowed $1,000 from Elisha Ruckman for that purpose, with that sum, and with his own money, paid $1,240 to Bowen, without consultation or agreement with Ruckman, but for Ruckman's security caused Bowen to execute a deed to Ruckman. He had given no note to Ruckman for the money, and there was no contract between them as to what time it was to be repaid, nor was any rate of interest agreed upon between them. Ruckman had no knowledge of the fact that the deed was made to him, and had no agreement with Bowen that it should be so made. Cory intended, however, that it should stand as security to Ruckman for the thousand dollars borrowed of him.

Cory was then in possession of the land and has continued in the uninterrupted possession of it ever since, has made improvements, paid all the taxes in his own name, and has always claimed to be the owner of the land. Cory, some years afterwards, as appears from the evidence, rendered legal services for Ruckman. The services are shown by the testimony to be worth more than the thousand dollars borrowed from Ruckman. The parties Ruckman and Cory were cousins.

In April, 1862, Ruckman, without consideration, conveyed to one Margaret Hopping the land in question, and subsequently in June, 1864, married her, and when she began her suit in ejectment Ruckman was living, but the parties were separated.

The cause was heard by the court and a decree rendered in favor of the appellee, requiring the appellants to convey to him the legal title to the land, and from that decree he appeals. The errors assigned are:

First—The court erred in not sustaining the demurrer, and in not dismissing complainant's bill.

Second—In admitting incompetent evidence for complainant.

Third—"In finding the deed to be a mortgage to secure a debt; that the debt was paid in the absence of the payee or his representatives and requiring a deed from appellant."

Fourth—In not requiring the representatives of Elisha Ruckman to be made parties to the bill.

Fifth—In rendering a decree against appellant for costs.

Sixth—In not granting appellant a re-hearing.

As to the first error assigned, that the court erred in not sustaining the demurrer to the bill, it is enough to say that it is difficult to imagine a case more distinctly within the jurisdiction of a court of equity. The complainant in the bill claims that whatever title Ruckman ever had in the property in controversy, was conveyed to him by Bowen by the direction of Cory, the appellee, and in execution of the contract between himself and Cory for the conveyance of the land, upon the payment of the consideration money.

The only object of Cory was to secure the money loaned him by Ruckman. Payment, by whatever means it was afterwards effected, gave to Cory a right to a conveyance of the land

to him by Ruckman, or his grantee, Mrs. Ruckman, she having acquired the legal title with notice of Cory's rights. Notice to her must be inferred from Cory's actual possession. A court of chancery alone had jurisdiction to compel her to convey.

The appellant cannot successfully claim to be a bona fide purchaser for a valuable consideration. She took only the rights of Ruckman charged with notice of all the rights of Cory.

Assuming that Ruckman was a mere mortagee of the lands in question, after his conveyance to the defendant, nothing remained in him which could, in any case, descend to his legal representatives.

Gould v. *Newman*, 6 Mass. 239.
1 Jones on Mortgages, Par. 808.
Welch v. *Priest*, 8 Allen (Mass.), 165.
Hunt vs. Hunt, 14 Pickering, 374.

This effect is given to a conveyance by a mortgage when the debt is not otherwise secured.

1 Jones on Mortgages, Par. 808.

The decisions cited for the appellant do not contravene the foregoing proposition.

The defendant relies upon the alleged laches of the complainant, and hints at the possible application of the statute of limitations as a bar to the relief asked by the complainant. To this we answer "laches cannot be imputed to one in peaceable possession of land for delay in resorting to a court of equity," especially when he invokes the aid of the court as soon as a

necessity for its interference becomes apparent. In this case the appellee was in peaceable possession of the land, in full confidence of right, until disturbed by the action of ejectment commenced by the appellant. He then promptly applied to the Court of Chancery for relief.

The Illinois doctrine upon this subject will be readily understood by referring to the cases of

Mills v. *Lockwood*, 42 Ill. 111.
Wilson v. *Byers*, 77 Ill. 76.

The delay of the complainant in asserting his rights is sufficiently accounted for by the fact that he had never, until the commencement of the action of ejectment, been disturbed in his possession. No length of delay is laches, if it is sufficiently accounted for.

McIntosh v. *Sanders*, 68 Ill., 128.

The matters set forth in the bill make a case so clearly and at the same time as exclusively within the jurisdiction of a court of chancery that we do not think it necessary to cite authorities.

The second error assigned questions the competency of the complainant Cory to testify as a witness.

This question is to be decided by reference to the provisions of the Statutes of Illinois on the subject of Evidence. It was argued before the Judge who heard the cause, who was for many years a Judge of the State Circuit Court, and he held with us. His authority is of at least persuasive value.

See Revised Statutes of Ill., Chap. 51, Secs. 1 & 2.

The appellant, defendant below, claimed title to the land in question under a deed of conveyance which purports to convey to her all the rights of the grantor.

After the delivery of the deed nothing remained in the grantor. She defended the suit in her own right and not as trustee, representative, nor as heir, legatee or devisee.

See authorities before cited.

The third and fifth assignments of error are submitted by counsel of appellant together, and we will pursue the same order of argument.

1. It will be noticed that the defendant below does not, by pleading or otherwise, suggest to this court that there are in existence any representatives of Elisha Ruckman other than herself.

The Circuit Court did not presume, nor could it in order to defeat its own jurisdiction presume the existence of parties interested in the property in controversy other than those before the court.

If there exists representatives of Ruckman, other than the defendant herself, their existence can only appear by force of some legal presumption, of which we have no knowledge, and then if the same presumption does not also bring them under the jurisdiction of the court, it was the duty of the Circuit Court to proceed with the case and dispose of the rights of the parties to the cause. It is answer enough, however, to say that the pleadings disclose no other interest in the lands than such as are asserted by the parties before the court.

We do not discuss the effect of the evidence, for if Cory was a competent witness there is no doubt but that the evidence fully supports the allegations of the bill, and entitles the appellee to a decree according to the prayer of the bill.

JOHN M. PALMER,

For Appellee.